OFFICE OF THE
PUBLIC COMPLAINTS COMMISSIONER

REPORT ON THE INVESTIGATION OF ALLEGATIONS MADE AGAINST SOME MEMBERS OF THE METROPOLITAN TORONTO POLICE HOLD-UP SQUAD

General Report

March, 1984

TABLE OF CONTENTS

INTRODUCTION

In October, 1981 a number of widely-publicized allegations of misconduct were made against some members of the Hold-Up Squad of the Metropolitan Toronto Police Force. My office, on the direction of the Attorney General, became involved in the investigation of complaints which were brought to public attention by a group of Toronto criminal lawyers. Notwithstanding that the Act under which my Commission operates had not been proclaimed, I decided to follow its procedures as closely as possible.

This report is written with a twofold objective. Not only does it contain the results of our investigation, but it also presents a number of recommendations which, I hope, will serve to improve the methods of police interrogations of suspects in order to assist police officers in conducting proper interrogations and assure both the public and the police that allegations of misconduct can be effectively investigated.

This report has been released much later than was originally intended. This delay was caused by a lengthy jury trial which dealt with the same subject matter as some of the complaints. This trial commenced in November, 1982, with a voir dire to determine the admissibility of statements given

by the accused to the police. At that time, I made a decision not to release the report until the conclusion of the trial. This decision was communicated to the public via a news release, in November, 1982, which stated:

> "My investigation into a number of allegations of police brutality made by a group of lawyers against some members of the Metropolitan Toronto Police Hold-Up Squad is substantially complete. However, there is a criminal trial currently before the courts and it is my view that if this report was released during the trial, it might be portrayed in such a way as to have a possible effect on the trial. Therefore, I have decided to release this report after the trial has been concluded."

Despite the unexpected length of the trial, which finally ended in December, 1983, I believe that the reasons governing the original decision are still valid. Moreover, the investigation itself was advanced by access to the evidence led at the trial, evidence which was given under oath and subject to cross-examination, and which, in some cases, was not otherwise available to our office. In addition, I had an opportunity to do more research on the question of video taping which now forms a major part of this Report.

The General Report is divided into four parts.

The first part briefly describes the manner in which these complaints came to public attention and the manner in which investigation was undertaken by my office. There is also a brief review of the reasons why, in a number of cases, complainants did not proceed with their complaints.

The second part contains general comments about the specific complaints. It briefly describes some of the problems that result from the fact that some time had elapsed between the date of the alleged misconduct and the date the complaint first reached this office. This part goes on to summarize the results of criminal trials relevant to the complaint, and the results of the investigations done by the Metropolitan Toronto police force's Public Complaints Investigation Bureau, and by my office.

The third part contains my comments and recommendations and the fourth part deals with the issue of videotaping interrogations of prisoners by police officers.

In a separate report, I have summarized the facts relating to the investigation of each complainant individually. That report is approximately 235 pages in length.

Having regard to my concern for the right to confidentiality of both the police officers and the complainants involved, I do not propose to make any names public. Most of the evidence reviewed in this investigation has already been raised publicly at the various judicial proceedings associated with these cases including the recent criminal trial which lasted over one year. I have, however, sent the entire Report with names included to the Attorney General for his consideration.

I feel that this is the only fair approach to take in the circumstances. Since this has been an investigation and not a public hearing by a court or tribunal, neither complainant nor police officer has had the protection of rules of evidence and procedure which set limits as to what facts may be put forward for consideration. In writing the individual summaries I set out all relevant information that has been uncovered, some of which could never be considered in a court or other tribunal. The continuous debate regarding Royal Commissions publicly naming individuals who have not been charged, demonstrates the potential for harm in this area and the need to exercise extreme caution to ensure the protection of every person's civil liberties.

Part I BACKGROUND EVENTS AND METHODS OF INVESTIGATION

A. Events Prior to Investigation by Public Complaints Commissioner

On October 22, 1981, at a meeting of the Metropolitan Board of Commissioners of Police, letters from seven Toronto criminal lawyers were tabled. Each of the letters contained allegations that one or more persons had been tortured by officers from the Hold-Up Squad of the Metropolitan Toronto Police Force.

Four of the letters briefly described the nature of the complaint. The other three letters contained no specific information. None of the letters contained any names of the victims of the alleged torture nor any names of the police officers involved, nor were any dates of the alleged incidents given.

The lawyers called for a public inquiry into these very serious allegations.

The next day, October 23, 1981, Chief of Police, Jack Ackroyd, appointed a team of three senior police officers to investigate the allegations raised by the seven lawyers. This special investigative team, headed by Staff Superintendent

Jack Reid, received additional complaints communicated to them by other lawyers.

Although the Metropolitan Toronto Police Force Complaints Project Act, 1981, was not proclaimed in force until December 21, 1981, I had been informally monitoring complaints against the Metropolitan Toronto Police Force since September 14, 1981.

On October 26, 1981, I met with Staff Superintendent Reid and it was agreed that he would provide me with reports at regular intervals so that I could monitor the progress of his investigation. At that time, I was also given copies of the letters submitted to the Metropolitan Toronto Board of Commissioners of Police.

In November, 1981, the President of the Ontario Criminal Lawyers' Association wrote to the Attorney General of Ontario and joined in the demand for a public inquiry, under the Public Inquiries Act, in order to conduct a thorough investigation of the allegations and to make appropriate recommendations which would aid in eliminating similar allegations in the future.

Further support for a public inquiry came as a result of a petition, in November, 1981, signed by 73 Toronto criminal lawyers and sent to Amnesty International, requesting that

that body conduct an investigation into the allegations against the Hold-Up Squad. Amnesty International wrote the Attorney General in January, 1982, urging that a public inquiry, independent of the police, be instituted to examine the complaints.

The Attorney General's response to the various requests for a public inquiry was that there was new legislation pending establishing new procedures to handle complaints against the Metropolitan Toronto Police Force. Accordingly, he had asked me, in my capacity as the newly-appointed Public Complaints Commissioner, to become involved in these allegations. The Minister also stated that he would await the completion of the special police investigation and my subsequent report before making any decision in the matter.

On February 17, 1982, at a press conference, Staff Superintendent Reid announced that his special team had been able to investigate five complaints. The reason for this low number was that, as mentioned previously, the seven letters which initiated the investigation contained very little, if any, detail. Subsequent attempts by Staff Superintendent Reid to ascertain the identities of various complainants and to obtain specific details of the incidents were largely unsuccessful. Several lawyers were reluctant to release information to the police officers, particularly in situations

where their clients were awaiting trial for criminal offences. Other complainants names were withheld because, when they were contacted by their lawyers, they apparently did not want to register formal complaints. I subsequently was told that many of those persons simply refused to speak to police investigators, but would be willing to talk to the civilian investigators from my office.

Staff Superintendent Reid stated that of the five complaints he had investigated, two investigations were completed and the other three were delayed pending outstanding criminal trials. He further stated that a complete and thorough investigation had been done and that the facts had been placed before a Crown Attorney. The Crown Attorney's opinion was that there was no evidence to justify laying either criminal charges or Police Act discipline charges against any police officer.

Later that same day, February 17, 1982, the Hold-Up Squad, through their counsel, Edward Greenspan, Q.C., issued a public statement in order to defend its position in the wake of increased press coverage being devoted to the allegations. Mr. Greenspan spoke out against the appeal to Amnesty International and the reluctance of many of the lawyers to provide sufficient details of the allegations. He also called

for the establishment of a committee to study and recommend new procedures for interrogations.

B. Investigation by Public Complaints Commissioner

1. Initial Meeting with Group of Lawyers

As noted above, it was apparent that Staff Superintendent Reid's special investigation team was not receiving enough cooperation to adequately investigate the entire scope of allegations originally presented to the Metropolitan Toronto Board of Commissioners of Police on October 22, 1981.

On February 23, 1982, following a request from the group of lawyers who originally raised the allegations, a meeting was held in my office with them and their counsel. At that time, the lawyers presented me with their summary of 19 complaints alleging unlawful and excessive use of force by members of the Metropolitan Toronto Police Force's Hold-Up Squad. Four additional complaints were added shortly thereafter, bringing the total number of complaints to 23.

At the February 23, 1982, meeting it was agreed that I would receive all of these complaints and proceed with these matters according to the procedures contained in the new

legislation. I agreed with the group of lawyers to make every effort to protect the confidentiality of the information that was provided and to preserve the confidentiality of all material developed during the course of my investigation, as is the procedure with any complaint investigated by this office. It was also understood that all of the incidents alleged took place prior to the proclamation of the legislation. Accordingly, although every effort would be made to treat these complaints in accordance with the procedure set out in the statute, because the statute was not in force at the time these incidents occurred, this might not always be possible.

2. Method of Investigation

My investigation commenced in March, 1982. From the outset, I recognized the need to conduct the investigation with as much thoroughness and diligence as possible. Accordingly, after obtaining a special budget approved by the Attorney General, I rented extra office space at a separate location and three full-time investigators were assigned exclusively to this investigation. These three investigators were assisted by a secretary and a summer student.

Many of the allegations had already been raised in trial proceedings. I obtained transcripts of all relevant trials

and summaries were made of the testimony of each witness in every trial.

A great deal of documentation was also examined. These documents included records of arrest, supplementary arrest reports, use of force reports, police occurrence reports, police officers' notebooks, property reports, prisoner records, police vehicle logs and formal typed statements given to police investigators.

A major part of my investigation consisted of interviewing police and civilian witnesses. My investigators interviewed Hold-Up Squad officers who had investigated the complainants as well as other police officers who had had contact with the complainants at the time of their arrest, interrogation or booking. Any police officers who were in the vicinity of the interview rooms while the complainants were being interrogated were also interviewed by my investigators in order to determine whether they saw or heard anything relevant to the allegations.

Civilian witnesses who had seen the complainants either prior to or after their arrest and interrogation were also interviewed by my investigators. These witnesses included friends and relatives of the complainants, lawyers who were retained by the complainants after their arrest and doctors who conducted medical examinations of the complainants.

A small number of witnesses were not willing to be interviewed for a variety of reasons. Mainly, their reluctance was out of concern that they might subsequently be called as witnesses at pending court proceedings. Because the incidents complained of pre-dated the proclamation of the legislation under which I operate, I was unable to make use of the powers of subpoena provided by the legislation and so could not compel these witnesses to come forward with their evidence. However, it is my opinion that the reluctance of these few witnesses did not prevent me from conducting a thorough investigation. Any information sought from these witnesses was obtained from other sources so that I was not in a position of being unable to find a particular piece of information.

I also looked elsewhere for possible sources of evidence. For example, I obtained transcripts of the tapes produced by Mr. Neil Proverbs as there were references made in those tapes to improper tactics being used by certain named members of the Hold-Up Squad. My investigators noted all of these references to see whether any of them related to specific complaints and to assist in my overall analysis.

Individual files for each complainant, each subject officer and each witness were prepared. Altogether, a total of 153 files were opened.

The information gathered during the investigation was collated and a system of cross-referencing was devised whereby a copy of each statement or testimonial summary or other relevant document was placed in the file of each person named in the document. Charts were prepared as investigative aids to pinpoint specific areas of concern and to assess uniformity or variation in the court testimonies of each witness.

Various articles, legal decisions, and Law Reform Commission reports concerning the use of video tape recording of police interrogations were canvassed. These materials were useful in arriving at some of the recommendations that appear in Part III of this Report.

A lengthy criminal jury trial commenced in November, 1982, with a voir dire to determine the admissibility of statements given by the accused to the police. Some of these accused were complainants in this investigation. This trial did not end until December, 1983. One of my investigators spent a great deal of time attending at the trial to monitor the testimony of relevant witnesses. In addition, transcripts of various parts of the trial were ordered and examined.

C. Investigation by Bureau

I indicated at the outset of my investigation that I would proceed, to the extent possible, in accordance with the procedures outlined in the Metropolitan Police Force Complaints Project Act, 1981.

This Act contemplates an initial investigation, in most cases, by the Public Complaints Investigation Bureau of the Metropolitan Toronto Police Force (hereinafter referred to as the "Bureau"). There is also authority for my office to conduct an initial investigation in certain circumstances. After this initial investigation, the Chief of Police decides whether any action is warranted. A complainant who is not satisfied with the decision of the Chief of Police can request me to review the investigation or the Chief's decision. Generally, in these cases I re-investigate relevant areas of concern.

During the course of the Bureau's investigation I received monthly interim reports, as contemplated by the Act. In this way my investigators were able to monitor these investigations and learn about the specific details of each allegation and the information obtained as the investigation proceeded.

The Bureau investigation was conducted in a manner similar to ours. Written statements were obtained in order to get specific details from the complainants and from subject officers. Copies of police officers' notebooks were obtained and other relevant documentary evidence was collected. Police officers, civilians and doctors who examined some of the complainants were interviewed.

In these Hold-Up Squad matters the Bureau conducted an initial investigation in 8 cases. I conducted an initial investigation in 4 cases. I also conducted a review investigation in 3 other cases. In addition to monitoring the Bureau investigations, I also examined their entire investigative file and I have used all of that information in analyzing this entire matter.

D. Complaints Not Fully Investigated

As I explained, not all of the 23 cases that were originally received were investigated exhaustively. There were eleven cases falling into this category.

For example, in one case the prospective complainant had left Canada and was living permanently in Jamaica. In another case, a prospective complainant was advised by his lawyer not to pursue his complaint because he had instituted a civil suit

against the police force. In another case, I discovered that the subject matter of the complaint had already been considered in the criminal courts, both at the trial and appellate levels. The outcome at both levels had been against the complainant. In that case, four officers of the Hold-Up Squad were charged with wounding and indecently assaulting the complainant and were acquitted at trial. An appeal by the Crown to the Ontario Court of Appeal was dismissed. It was my opinion that a measure of finality had to be attributed to the court decisions and in the absence of any fresh evidence, there was no compelling reason to further investigate this particular matter.

In two cases, individuals were reluctant to lodge a formal complaint because they were fearful of jeopardizing their prospects for parole. They were under the impression that in many cases police officers involved in the investigation of crimes are contacted by parole authorities when an inmate is considered for parole. This has caused me some concern, not only with respect to this investigation, but also with respect to future complainants who may have legitimate complaints, but may be hesitant to come forward because of their parole concerns.

I wrote to Mr. William Outerbridge, the Chairman of the National Parole Board, asking whether the Board has any policy

regarding inmates who have made allegations of police impropriety. Mr. Outerbridge responded by assuring me that an inmate's complaint about police impropriety would not adversely affect the Board's decision regarding release in parole.

While this answer would provide reassurance in respect of at least one of the issues that might worry complainants concerned about parole, it does not address the other major problem, which is the complainant's fear that police officers against whom they have made a complaint might be consulted as to whether the complainant is an appropriate subject for release into the community. Accordingly, I have approached both the National and the Provincial Parole Boards with a view to discussing the Board's practices and policies in regard to this issue.

A further, more general problem is one that was addressed in the First Annual Report of my Commission (1982) at p. 81:

> "It takes courage to complain about any person in a position of authority.
>
> A complainant may fear, justifiably or not, that there will be retribution for his complaint. He might be facing criminal charges in which the same police officers are involved....
>
> Even a person who is not subject to criminal proceedings may wish to consider carefully whether or not to pursue a complaint. Like

> any process which is powerful enough to protect rights and sanction wrongdoers, ours will demand a commitment of time and effort."

These remarks are applicable to many complainants. Added to this is the fact that our office was new and untried at the time the inquiry began.

Therefore, although several of the complaints were never made in a formal manner, I nevertheless conducted some investigation into all of the 23 cases that I received. I have used all the information gathered in analyzing this entire matter and in formulating the recommendations contained in this report.

Part II GENERAL COMMENTS

A. Lapse of Time and Effect on Investigation

All of the incidents from which allegations of misconduct were made occurred prior to December 21, 1981, the date of the official establishment of my office.

In fact, in 11 of the 23 cases, the incidents occurred in either 1979 or 1980. Three incidents took place in the first half of 1981; three occurred during the summer of 1981; five occurred in September, 1981, and one incident occurred on December 5, 1981.

In order to effectively investigate an allegation of misconduct it is necessary to receive a complaint as soon as possible. A complaint made in a timely manner can lead to immediate investigative steps that will enable evidence to be preserved. For example, soiled clothing can be seized and pictures of injuries can be taken. In addition, witnesses can be interviewed while they are still available, their memories are fresh and they have not had the opportunity to discuss the matter with others, thus avoiding the possibility of collusion among complainants or police officers.

In many of these cases, complaints were made by the complainants to their defence counsel, shortly after the alleged events occurred. However, the complaints were not brought to the attention of any public authority at that time. As noted above, my office was not in existence and, for various reasons, the defence counsel acting for the complainants chose not to direct their clients to the police force's Citizen Complaint Bureau, which existed prior to the establishment of my office.

Only 1 of these 23 complaints was made to this office or to the Bureau within a week of the incident and only 2 others were made within three months of the incident. The majority of the complaints were registered more than eleven months after the incident and, in 2 cases, over two years had passed since the alleged incident.

The following chart sets out the date of the alleged incident, the date a complaint was first registered with a public authority and the resultant time lapse:

Case No.	Date of Alleged Incident	Date Complaint was Filed	Time Lapse
1.	May 15, 1979	Feb. 23, 1982	33 months
2.	July 3, 1979	Feb. 23, 1982	31 months
3.	Jan. 3, 1980	Nov., 1981	22 months
4.	Jan. 11, 1980	Nov., 1981	22 months
5.	Jan. 11, 1980	Nov., 1981	22 months
6.	Aug. 15, 1980	Feb. 23, 1982	18 months
7.	Aug. 22, 1980	Dec. 8, 1981	15 months
8.	Dec. 18, 1980	Feb. 23, 1982	14 months
9.	Dec. 18, 1980	Dec. 7, 1981	12 months
10.	Dec. 18, 1980	Nov., 1981	11 months
11.	Dec. 18, 1980	Jan. 14, 1981	1 month
12.	Feb. 16, 1981	Feb. 23, 1982	12 months
13.	Mar. 12, 1981	Nov. 3, 1981	7 months
14.	Mar. 12, 1981	Feb. 23, 1982	11 months
15.	July 3, 1981	Nov. 23, 1981	4 months
16.	July 27, 1981	Mar. 8, 1982	7 months
17.	Aug. 28, 1981	Nov. 3, 1981	2 months
18.	Sept. 22, 1981	Feb. 23, 1982	5 months
19.	Sept. 22, 1981	Mar. 15, 1982	6 months
20.	Sept. 22, 1981	Feb. 23, 1982	5 months
21.	Sept. 22, 1981	Apr. 3, 1982	6 months
22.	Sept. 22, 1981	Feb. 23, 1982	5 months
23.	Dec. 5, 1981	Dec. 9, 1981	4 days

B. Court Proceedings

1. Results of Criminal Trials

Of the 23 persons who made allegations of police misconduct, 18 were convicted of robbery offences following either a guilty plea (11) or a trial (7). Two people were acquitted at trial, but the acquittal was reversed on appeal and a further appeal to the Supreme Court of Canada was pending at the time of writing this report. Two other persons were acquitted at trial and all charges were withdrawn against one complainant. That complainant is presently involved in a civil action against the police force.

In two cases, police officers were charged with criminal offences arising out of the complaint allegations. In one case, four officers were charged with wounding and indecent assault. All the officers were acquitted by a Supreme Court jury. In the other case, two officers were charged with assault causing bodily harm. Those officers were acquitted by a Provincial Court Judge.

2. Results of Judicial Determinations Concerning Allegations of Brutality

Apart from the two cases where criminal charges were laid against a total of six police officers, all of whom were acquitted, allegations of brutality were considered during *voir dires* held to determine the admissibility of inculpatory statements made to the police. Some of these *voir dires* were held during the course of a preliminary inquiry; others were held during the course of a trial.

Altogether, a total of 15 cases referred to me were the subject of *voir dires*. In 12 of these cases the presiding Judge found that the statements were voluntarily made. In the three other cases the presiding Judge found that the statements were not voluntarily made. However, in none of these cases did the Judge make a finding of brutality and, in fact, in one case, the Judge specifically found that there was no brutality. The statements were held to be inadmissible for reasons other than the use of force by police officers.

In one case, although the Judge ruled that a confession was voluntarily made, the accused person did not testify at the *voir dire*. He did, however, testify to these allegations at the trial, held before a jury and was acquitted. This does

not necessarily mean that the jury members accepted the allegation of brutality, but it is possible that they did.

The fact that judicial determinations had been made in the majority of the cases I investigated was taken into consideration in analyzing these cases. However, in some cases my investigation uncovered evidence that was not made available at trial or at a voir dire. I also had the benefit of comparing the testimony of various witnesses who gave evidence at more than one judicial proceeding. Accordingly, I did not feel bound by the findings of the courts in my analysis of these allegations.

C. Results of Investigation

As I have already stated, I have considered all of the cases brought to my attention, even those which were not fully investigated by either my office or the Bureau. Each of the 23 separate cases has been considered carefully on its own and has been reported fully to the Attorney General. However, considering the manner in which these cases came to public attention, I think that it is appropriate for me to make some general public comments about the cases as a whole.

1. Similarity of Complaints and Similar Fact Evidence

Many of the allegations have the following common characteristics: (1) in 19 cases there are allegations of suffocation, either with a plastic bag or a piece of material or a hand; (2) in 18 cases there is an allegation that the complainant was handcuffed while being interviewed and in 4 of those cases there is an allegation that the complainant's wrists were covered by some kind of material before the handcuffs were affixed; (3) in 14 cases it is alleged that the complainant was stripped while being interrogated; (4) in 12 cases there are allegations that in addition to being suffocated to some extent, handcuffed and stripped, the complainant was also assaulted at the time of his interrogation; (5) almost all of the allegations alleged that the incidents took place in small offices or rooms within a police station; (6) all, except one, of the allegations concern Hold-Up Squad officers; and (7) all, except one, of the allegations allege that more than one officer was involved.

Hold-Up Squad officers were the subject of the allegations in all cases except one. However, each allegation refers to different officers, although some officers are named in more than one allegation.

Evidence of prior similar conduct is sometimes admissible in criminal trials as circumstantial evidence supporting the Crown's case that an accused person committed the particular offence for which he is being tried.

There are, however, inherent dangers in admitting this type of evidence into a trial. Similar fact evidence must be viewed cautiously because there is a danger that a jury might convict an accused simply on the basis of his alleged prior conduct, rather than on the basis of the evidence presented in support of the particular offence being tried. Therefore, because of the extremely prejudicial effect it may have, judges take great care before allowing similar fact evidence to be tendered.

In fact, in one of the cases that I received, officers were charged with criminal offences and the Crown sought to adduce similar fact evidence. The presiding trial Judge ruled that such evidence was not admissible in the particular circumstances of that trial.

There are several factors that the courts consider before allowing similar fact evidence to be used.

One factor is that similar fact evidence can only be used if it relates to alleged past conduct of the particular accused person. An allegation against one member of the

Hold-Up Squad cannot be used as similar fact evidence in relation to another allegation against a different member of the Hold-Up Squad. To do so would imply guilt by membership, which is definitely not the proper test to use, either in a court of law or in an investigation which could lead to charges.

Another important factor is the possibility of collusion between and among complainants before making their allegations. For example, four of the complainants were arrested on the same evening, investigated at the same police station and later placed in the police cells together. They were also transported to jail in the same vehicle and at least three of them, according to trial testimony, became acquainted with each other while incarcerated at the jail prior to making these allegations.

One certainly cannot ignore the possibility of collusion with respect to some of the complainants. However, there are other complainants who make similar allegations and who were not arrested together or known to each other and I have found no evidence which suggests that they had the opportunity to conspire with anyone else.

As I indicated earlier in this report, in several of the cases there has been a judicial determination which does not tend to support the complainants' allegations. Furthermore,

my investigation revealed inconsistencies which do not tend to support some of the complainant's allegations. These are considerations which must be kept in mind when considering what use, if any, can be made of the similar features of the allegations that I have received.

2. Summary of Results of the Investigation of Individual Complaints

In 12 cases, investigation was not able to proceed to a point where I could draw any kind of conclusion due to the unwillingness of the complainants to proceed with the complaint process or the unavailability of the complainants. In some cases, no investigation was able to be done since the complainants would not respond to either the police investigators or investigators from my office. In other situations, some investigation was done, but the complainant either withdrew the complaint at some time in the process, did not request a review by my office or could not be located. These 12 cases are briefly summarized as follows:

Complainant #1 alleged that he was beaten and suffocated by a towel by Hold-Up Squad officers so that he would give them an inculpatory statement. At his criminal trial he was convicted. He refused to be interviewed by police investigators or by investigators from the Public Complaints Commissioner's Office.

Complainant #2 alleged that he was beaten and suffocated with a wet towel by Hold-Up Squad officers attempting to obtain an inculpatory statement from him. The charge on which the inculpatory statement was based was withdrawn when the complainant was brought before a judge. Two officers were charged with the criminal offence of assault causing bodily harm and were acquitted.

The complainant declined to co-operate with the investigation as he preferred to sue the officers civilly. That case is still outstanding.

Complainant #3 alleged that he had been stripped, suffocated with a plastic bag and beaten by Hold-Up Squad officers attempt to obtain an inculpatory statement. He raised these allegations at his criminal trial and the judge made specific findings that his allegations were not credible. He was convicted. Complainant #3 refused to co-operate with any investigation into his complaint.

Complainant #4 alleged that he had been threatened, stripped, beaten and suffocated with a wet towel by Hold-Up Squad officer attempting to obtain an inculpatory statement. At his criminal trial, complainant #4 pleaded guilty. Subsequently, he withdrew his complaint.

Complainant #5 complained that he had been struck on the head by Hold-Up Squad officers attempting to obtain an inculpatory statement. Complainant #5 pleaded guilty at his criminal trial and subsequently withdrew his complaint.

Complainant #6 alleged that he had been stripped, beaten and suffocated with a towel by Hold-Up Squad officers attempting to obtain an inculpatory statement. He pleaded guilty at his criminal trial and later withdrew his complaint. Medical evidence that was obtained was not supportive of the complainant's allegation.

Complainant #7 alleged having been stripped and suffocated with a plastic bag by Hold-Up Squad officers attempting to obtain an inculpatory statement. At his criminal trial he was convicted and he subsequently withdrew his complaint.

Complainant #8 alleged having been stripped, beaten and suffocated with a plastic bag by Hold-Up Squad officers attempting to obtain an inculpatory statement. At his criminal trial, the judge was not satisfied that the statement made by complainant #8 to the Hold-Up Squad officers had been made voluntarily. Complainant #8 was acquitted. This complaint was investigated by the police force and found not to be substantiated. Complainant #8 declined to have the Public Complaints Commissioner review his complaint.

Complainant #9, who was the co-accused of complainant #8, also complained of being stripped and suffocated by Hold-Up Squad officers. His statement was also rejected at trial since the judge was not satisfied that it had been obtained voluntarily. Complainant #9 was acquitted of this charge, but a new trial was ordered following a successful appeal by the Crown. When the Office of the Public Complaints Commissioner attempted to get in touch with the complainant, it was discovered that he had been deported. Efforts to discover his whereabouts were unsuccessful.

Complainant #10 alleged that he had been beaten and smothered with a cloth by Hold-Up Squad officers attempting to obtain an inculpatory statement. At his trial, complainant #10 was convicted. Complainant #10 refused to co-operate with any investigation into his complaint.

Complainant #11 complained that he had been stripped and beaten by Hold-Up Squad officers attempting to obtain an inculpatory statement. At his trial, complainant #11 was convicted. He refused to co-operate with any investigation into his complaint.

Complainant #12 alleged that he had been stripped, beaten and suffocated with a towel by Hold-Up Squad officers attempting to obtain an inculpatory statement. At trial, the judge

refused to admit complainant #12's statement because he was not satisfied that the statement had been obtained voluntarily. The judge specifically found that the complainant had not been suffocated, but commented on "dubious" aspects of the evidence given by the police. Complainant #12 was acquitted. This complaint was not made until 11 months after the alleged incident and efforts to contact the complainant for an interview were unsuccessful, as whereabouts were unknown.

Of the remaining 11 cases, there were five cases in which I was of the opinion that there was not sufficient evidence to substantiate the allegations made. They are summarized as follows:

Complainant #13 alleged that he was hit and kicked by Hold-Up Squad officers in order to force him to give an inculpatory statement. Complainant #13 had a hernia which he attributed to the police beating. However, medical evidence was given by a doctor consulted by complainant #13 who stated that the hernia was consistent with the complainant's activities while fleeing arrest, rather than a punch or a kick.

Complainant #14 complained of some rough treatment and of suffocation with a towel by Hold-Up Squad officers attempting to obtain an inculpatory statement. At his criminal trial, complainant #14 was convicted by a jury. Photographs taken four

hours after the arrest of the complainant show no visible injuries, nor do medical records indicate any injuries. Two civilians who were with the complainant at the police station indicated that they did not see any evidence of injury, nor did the complainant make any mention of mistreatment while in their presence.

Complainant #15 alleged that he had been beaten by officers of the Hold-Up Squad attempting to obtain an inculpatory statement. This complainant subsequently charged the officers with assault. At the officers' trial, they were acquitted by the jury. The case was appealed, but the Court of Appeal dismissed the case, confirming the verdict of the jury. Upon reviewing the case, it appeared that all of the issues raised in the allegation had been dealt with by the criminal court in the officers' trial. I visited the complainant in jail to discuss the situation with him and asked him if he felt that there were any issues that the court had not dealt with. He agreed that there were none and indicated that he understood that there had to be some finality to the process. I accepted the finding of the court in this complaint.

Complainant #16 alleged that he had been beaten and smothered with a bag by Hold-Up Squad officers attempting to obtain an inculpatory statement. He raised these issues at his criminal trial and the court specifically found that there had been no

violence used towards the complainant. The complainant was convicted. This complaint was, nonetheless, investigated. There were inconsistencies in the complainant's statement and in details of the allegation. This, coupled with the decision of the court led me to conclude that this complaint could not be substantiated.

Complainant #17 alleged that he had been beaten and indecently assaulted by Hold-Up Squad officers attempting to obtain an inculpatory statement. At his criminal trial, the complainant was convicted. The investigation into this complaint revealed medical and photograph evidence that was not consistent with the complainant's allegation. Accordingly, I concluded that complaint #17 could not be substantiated.

In the remaining 6 cases, my investigation left me with questions that were not answered to my satisfaction. These cases contained some significant discrepancies in officers' testimonies at trial and they were characterized by poor record keeping as to the treatment of the complainant while in custody and an inability on the part of certain officers to account for their whereabouts at relevant times. In no one individual case was the evidence conclusive, nor was it particularly strong; however I referred these cases to the

Attorney General for his consideration as to whether any of them contained sufficient evidence to warrant criminal proceedings against specific police officers.

My report to the Attorney General on these cases contained names and a detailed review of the evidence. The summaries below contain only some of the relevant details and are intended only to give a general outline of the cases.

Complainant #18 alleged that he had been suffocated repeatedly with a plastic bag by Hold-Up Squad officers in an attempt to force him to make an inculpatory statement. He also alleged that he was struck several times so that his nose was broken at the station. The complainant also alleged that he had involuntarily urinated and defecated when he was suffocated. He stated that the officers took him to the station wearing soiled trousers, but allowed him to bring an extra pair. He also stated that the officers had allowed him to shower and change at the station.

The Hold-Up Squad officers, while denying any mistreatment, corroborated the fact that the complainant was permitted to use the officers' shower before being booked in the cells. No explanation was given for this fact and it does corroborate one of the complainant's statements. On the other hand, the complainant also alleged that the officers had broken his nose

while a doctor who the complainant consulted, stated that the injury had probably occurred much earlier and the complainant's medical records at the hospital showed treatment for a broken nose some years before the alleged event.

Complainant #19 alleged that he had been beaten and suffocated with a plastic bag by Hold-Up Squad officers in an attempt to force him to make an inculpatory statement. He made an early and detailed complaint to his lawyer. There was no medical evidence to corroborate the injuries that the complainant claimed to have suffered.

The officers denied the allegations. However, there were some unexplained inconsistencies in the police officers' testimony on some points. For example, the complainant alleged having been taken to a washroom at one point in the evening and stated that an officer had punched him in the washroom. At the voir dire of the complainant's trial, all the officers specifically denied having escorted him to the washroom during the six hours that he was interrogated, as well as denying the assault. However, during his testimony, the complainant was able to describe some of the unusual features of the washroom, which were corroborated by the Staff Sergeants. At trial, one of the officers contradicted his previous testimony to the extent of stating that he might have accompanied the complainant to the washroom. The officers admit having left the

complainant alone and unattended in a room for four hours and one of the officers against whom allegations were made, was unable to account for his whereabouts for approximately three of those hours. The complainant alleged that the statement he signed had been typed in advance by one officer with no participation from the complainant. The complainant stated that this officer had simply filled in the complainant's name and address on this pre-typed document. At trial, a document examiner from the Centre of Forensic Sciences said that the relevant parts of the statement had probably been typed by two different typewriters.

Despite these disquieting features of the case, it is important to note that the judge at the trial of complainant #19, after hearing all of the complainant's evidence, concluded that the complainant was not to be believed and that the alleged events had not occurred. The complainant's statement was declared admissible and he was found guilty.

Complainant #20 alleged having been beaten and manually choked by Hold-Up Squad officers attempting to force him to make a statement. At trial, the officers denied the allegations.

However, there were a number of discrepancies in the officers' testimony as to some points in the evidence. Most of these discrepancies centre around whether or not the officers were

told by the complainant of a chronic debilitating illness from which he was suffering or whether they were aware of this illness through any other means. At the voir dire of complainant #20, the judge ruled his statement admissible. However, at trial, the jury acquitted the complainant.

The complainant had made an early and detailed complaint to his lawyer. However, a major difficulty in the investigation of complaint #20 was that the complainant was unable to identify officers that he alleged had mistreated him. Two officers admit having interrogated the complainant, but the complainant specifically stated at one point that neither of these officers were the ones involved. There were also some discrepancies in the complainant statements regarding the details of the alleged assaults.

Complainant #21 alleged that he had been beaten and suffocated by members of the Hold-Up Squad in an attempt to force him to give an inculpatory statement. The complainant complained to his lawyer as soon as he saw him, as well as to other people. He was consistent in his accounts of the alleged events. Two of the complainant's co-accused also stated that the complainant had complained to them and were able to give some details of the alleged mistreatment.

A lawyer observed the complainant walking in a hunched-over fashion on his third day in custody. The complainant also complained to a doctor about pain resulting from a police beating. The medical report, however, states that there were no visible bruises to the areas in which the complainant alleged he had been struck, although a painkiller was prescribed. The officers denied the allegation. However, there was some discrepancy in the police officer's evidence as to when the complainant may have been removed from the cells to identify other complainants.

When the matter came to trial, the complainant pleaded guilty to three charges. Two other charges, which were based solely on statements given by the complainant to the police officers, were withdrawn.

Complainant #22 alleged having been stripped, beaten and suffocated with a plastic bag by Hold-Up Squad officers attempting to force him to make an inculpatory statement. The officers denied the allegation. At trial, there were a number of discrepancies in the officers' testimony as to the whereabouts of themselves and the complainant at various points during the relevant evening. Further, there were elements in the evidence that supported the complainant's allegations that he had been strip-searched by interrogating

officers, who had denied having strip-searched him. There were also two unusual features in the statement that was put forward in evidence as having been given voluntarily by the complainant. In the complainant's statement, his own car was wrongly described and the way in which the gun was described was not what one would have expected from a civilian.

The complainant's statement was held to have been made voluntarily. He was convicted and his conviction was confirmed on appeal. I referred this case to the Attorney General for consideration because my investigation disclosed a witness who confirmed that he had seen bruises on the complainant the day after his interrogation which had not been noted by officers who searched the complainant before his interrogation. This evidence had not been put forward at trial, although it was available and known to defence counsel at that time.

Complainant #23 was co-accused with complainant #22. He too alleged that he had been stripped, beaten and suffocated with a plastic bag. The officers denied the allegation. The evidence pertaining to complainant #23 did not contain any of the unusual features of complaint #22. There was no complaint to any medical personnel about a police beating and there was no corroborative medical evidence. Complainant #23 was specifically found not to be credible by the trial judge. His

statement was held to have been made voluntarily. He was convicted and his conviction was confirmed on appeal.

This case was referred to the Attorney General mainly because of its similarity to complaint #22 and the fact that discrepancies in the officers' testimony having to do with the whereabouts of themselves and the complainants, apply to both cases.

Attorney General's Decision

The six cases described above, which contain some aspects worthy of consideration, were closely examined by two senior Crown Counsel with a view to determining whether there was sufficient evidence for criminal charges to be laid against any officer. The opinion of these senior Crown Counsel was that there was insufficient evidence of a trustworthy nature on which to base a criminal charge.

However, this finding does not end the matter. Some of these complaints have raised disturbing questions relating to issues fundamental to our justice system. Considered more narrowly, some of the complaints have brought into question the integrity of some officers of the Metropolitan Toronto Police Force. It is a matter of concern to me, as I am sure

it is to the police force and to the individual officers, that these questions could not be satisfactorily answered.

The reasons for this unsatisfactory situation are various; however, there is one significant factor that is of special concern to me. That factor is the absence or disuse of procedures that would both protect suspects from the possibility of abuse and police officers from unfounded allegations of abuse. Accordingly, I have made a number of recommendations relating to police procedures, with this need for dual protection in mind. These recommendations are set out in Part III of this Report.

Part III RECOMMENDATIONS FOR REFORM

My investigation in this matter revealed a number of inconsistencies in the evidence of the police officers, gaps in the time sequences and generally deficient procedures which were sufficiently established to warrant my concern. I believe that the recommendations I am making, if implemented, would reduce the number of complaints against the police force and as well would facilitate the investigation of complaints when they are made. It is my belief that the implementation of these recommendations will greatly improve the procedures used by the police force in taking statements from accused people.

A. Notebooks

During our investigation, we obtained copies of the notebooks of all police officers who had contact with the complainants either during arrest or interrogation. When we examined these copies, we noticed several problems with the manner in which police officers maintained an updated account in their notebooks. These problems included gaps in the time sequences shown in the books as well as word-for-word copying by one officer from the notes of a fellow officer. In regards to copying, serious difficulty was encountered in one instance where an important alteration was made by one officer in his notebook and this change was not reflected in his partner's

notebook, notwithstanding that the particular notebook purported to be an exact copy. We also noticed that the notebooks used by the Hold-Up Squad officers did not contain numbered pages. Furthermore, many of the Hold-Up Squad officers acknowledged that they did not always adhere to the procedure of having their notebook signed daily by their superior officer.

The importance of a police officer's notebook cannot be over-stated. It records all contacts with civilians as well as other officers and must contain a detailed and accurate account of every conversation which the officer has with an accused person. It is this record upon which a police officer relies when giving testimony in court since it would be impossible for him or her to have total unaided recall of every conversation and event. Therefore, the need for accuracy and detail is most urgent in order to reconstruct the arrest and interrogation of the accused person. Incomplete accounts can make it difficult for a trial Judge during a *voir dire* to have an accurate picture of the events and circumstances surrounding the taking of a statement. Lack of sufficient detail also poses a problem when an investigation is conducted into a complaint of police misconduct.

The importance of having a complete record of everything that is said by an accused person, even oral statements not reduced to writing, was stressed by the Quebec Superior Court in R. v. Smith (1981), 60 C.C.C. (2d) 327 at p. 328.

> "The Court cannot accept that police officers edit a declaration by taking down what they think is pertinent and only bring before the Court an edited version of what an accused has said, thereby forcing him to testify as to what was left out. An accused who makes a declaration that the Crown sees fit to bring in evidence is entitled to have it brought in its entirety before the jury, subject obviously to its pertinence. But it is not for police officers to decide what is pertinent and what is not."

The practice of copying from fellow officers' notebooks was severely critized by his Honour Judge Langdon in R. v. Vangent and Green (1978), 42 C.C.C. (2d) 313 (Ontario Provincial Court). At pages 326 and 327 of the reported ruling on a voir dire, the learned trial Judge stated:

> "There remains, however, some consideration of credibility. In determining credibility it is necessary always to bear in mind the frailty of human memory. The events about which Detective Mortimer and Officer Richards were testifying occurred on February 1, 1978. Their evidence was given on June 5, 1978, over four months later. It is obvious in assessing their evidence that both relied heavily on one set of notes that Detective Mortimer had prepared and which Officer Richards had adopted. The Court cannot refrain from criticism in this system, (which it has observed in other cases in the past) of two officers purporting one to corroborate the other, and yet relying on one set of notes made up as an aid memoire, as a single aid memoire, by the two officers

> in collaboration, after the event. Why, the Court asks would the officers not have sat down and made their own notes based on their own independent recollection? Is it because they feared that their independent recollection recorded on the very day of the events might differ? How could it differ, if only the truth were recorded? This is not to suggest that the officers are lying. It is merely an attempt to point out the undesireability of such a practice. It is not too strong, as Mr. Wright has suggested in argument, to suggest that both officers were "reading from the same script." They were refreshing their memory from the same set of notes, and bearing in mind particularly, the extent to which their independent recollections differed on matters not dealt with by the notes, there is every cause to be suspicious of the accuracy of their evidence...."

In Vangent and Green, Judge Langdon ruled that the method of recording the notes was one of the contributing factors in causing him to have a reasonable doubt as to the voluntariness of the statement made by the accused person.

Judge Langdon launched an earlier criticism against this practice in the unreported decision of R. v. James J. Byrne, released January 26, 1978. At page 25 of the judgment, the trial Judge stated:

> "However, the method chosen by the officers to record their perception of the interview, effectively negates there being any value or weight to the presence of a second officer. Detective Cover should not have sat like a bump on a log while Fleeton took the statement. At least he should have made his notes as events transpired. Fleeton should have made his own notes based on his

> recollection. That the two officers sat down and collaborated to produce what is effectively one set of notes, after the fact does nothing so much as leave them open to a charge of "cooking" their notes after the event. The defendant's cooking of the facts has been ample for this trial without the suspicion being raised that the police were up to it...."

In a more recent decision, Judge Salhany also commented on the problems that can arise when officers collaborate on their notes. In the unreported 1981 case of R. v. Charest et al. the officers had had "debriefing sessions" after their contacts with the accused, during which they discussed what had happened and wrote their notes. At page 5 of the judgment, Judge Salhany describes the process:

> "Constable Schnurr and Constable Morgan testified that in all instances where they came in contact with one of the accused, they later had a debriefing session in which they sat down together and collaborated in the preparation of their notebooks. The first thing they would do would be to attempt to set out the events which had occurred in chronological order. Then, one or the other would mention an event and they would discuss it and then record it in their notes. Any conversation which had occurred would be recorded using those words which approximated, as closely as possible, the words used by each speaker. It was conceded that generally only the gist of a conversation was recorded because they were unable to recall the exact words spoken by each person. Nevertheless, for some reason which was not satisfactorily explained to me, the notes of the officers purported to record the actual words spoken by the various parties from time to time.... (His Honour then cited an example from the evidence)....

In their testimony, both officers stressed that neither read the notes of the other either before or after they were recorded in their notebooks. Both also stressed that where one's recollection differed from the other, they would only record what they did in fact recollect.

Copies of the officer's notes were filed with the Court. Curiously, the notes were almost identical with respect to each of the many events which they apparently witnessed jointly. Words apparently spoken by the various parties were recorded in their notebooks almost word for word. This occurred in some instances under circumstances where the constables were in the presence of the accused for periods in excess of thirty minutes. It is a feat involving super human retentional abilities. Even the most credulous would have difficulty in accepting that anyone possessing less than these qualities would be capable of recollecting every detail which the officers purported to recall.

It is a simple fact of life that people do not necessarily witness an event in exactly the same way. What happens is that each person extracts out of an event observed by him, what has impressed him most. The danger which arises where two people collaborate in attempting to recall an event which they have observed is that each may supplement or add to his recollection that which someone else has observed. Once this is done, that person will then come to believe, quite innocently, that he witnessed something which he in fact did not do. There is also the danger where a person's recollection is different from an associate that he may unwittingly accept the other person's recollection because of his own misgivings as to the accuracy of his senses. This may occur particularly in the case where the other person is a senior officer or a person with a more dominant personality. Once this collaborated or combined memory is recorded in the officer's notebook, the notes become

> the stimulus which supposedly serve to refresh his memory many months (in this case almost two years) after the event.
>
> But it would be absurd to suggest or to expect a police officer, almost two years after the occurrence of certain events, to have an independent recollection of the details of those events by simply reading his notes. In this case, Constables Schnurr and Morgan constantly referred to their notes as they gave testimony and, as indicated earlier, their entire set of notes was filed as evidence in these proceedings. It then becomes the officer's notes which serve as the source of the evidence. Thus, it is the accuracy of the notes and the steps in their preparation which must be examined and assessed by the Court."

Judge Salhany went on to acknowledge earlier English cases in which courts had approved the practice of collaboration in making notes. However, he noted that he disagreed with the English authorities on this point, and considered this practice "quite improper."

Judge Salhany concluded by saying that, if the Crown's case and the nature of the defence had turned on the accuracy of the officers' recorded recollections (which it had not), all evidence based on the notebooks would have been rejected.

As noted by Judge Salhany, English Courts have taken a different view on this issue. In R. v. Bass (1953) 1Q.B. 680, the two police officers read from their notebooks accounts of the interview in which a statement was made by the accused.

The accounts appeared to be identical, but the police officers denied that there had been any collaboration in the preparation of the notebooks. Counsel for the accused requested that the notebooks be entered as exhibits so that the jury might be allowed to examine them. This application was refused. On appeal, the Court of Criminal Appeals held that, because the credibility and accuracy of the police officers was a vital matter, the jury should have been allowed to examine the notes when the police officers denied collaboration. The Court went on to state that it could see no reason why police officers should not collaborate when preparing their notebooks. At page 686 of the reported judgment, the Court stated:

> "With regard to the second ground of appeal the matter stood in this way. The officers' notes were almost identical. They were not made at the time of the interview. One officer made his notes after the appellant had been charged, and the other officer made his an hour later. Mr. Crowder suggested to the officers in cross-examination that they had collaborated. They denied that suggestion. This court has observed that police officers nearly always deny that they have collaborated in the making of notes, and we cannot help wondering why they are the only class of society who do not collaborate in such a manner. It seems to us that nothing could be more natural or proper when two persons have been present at an interview with a third person than they should afterwards make sure that they have a correct version of what was said. Collaboration would appear to be a better explanation of almost identical notes than the possession of a super human memory."

In another English case, R. v. Quinlan and Turner (1963) Crim. L.R. 349, two of the police officers who gave evidence had made their notes after referring to the notes of a third officer. The appellant's counsel argued that the jury should have been directed that this evidence was worth no more than the evidence of one witness. The Court of Criminal Appeal dismissed the appeal and stated that there was no substance in that contention.

While I have taken these English decisions into consideration in making my recommendations, I should point out here that, in those decisions, the Court of Appeal was considering whether a criminal conviction should be overturned and a new trial ordered simply because of evidence that the police officers had collaborated on their notes. The court was not asked to give an opinion as to the best method in which police officers might record their activities. The court's expressed opinion, then, related to what is permissible rather than what is advisable.

In conducting this investigation, I, unlike the English Court of Appeal, have been asked to make recommendations based on my findings that are directed to achieving more than simply permissible practices. Accordingly, the dangers expressed by Judge Langdon and Judge Salhany in regard to the practice of copying notebooks, coupled with my observations as to the

effect of this practice when a complaint of abuse is being investigated, has led me to take a more stringent attitude than that expressed by the English Court of Appeal.

The practice of police officers copying each other's notebooks causes me great concern. For one thing, it can easily give rise to a charge that police officers are, in the words of Judge Langdon, "cooking" a version other than the truth. Further, if an officer has copied from another officer's notebooks, he or she would be unable at trial to add the additional weight of independently recollected observation. Finally, there is the possibility that an item of information may be overlooked or an error compounded if one officer who recalls a particular item copies from a notebook which has not recorded this information.

For the above reasons, copying in the preparation of notebooks should not be permitted. Consultation in order to clarify incidental detail such as a street address or a person's name may be permitted, but actual copying which results in identical notes should not be tolerated. It is clear that the reason why many officers engage in this practice is to ensure that there will be no discrepancies in their evidence which could lead a trial Judge to declare a confession to be inadmissible. It would, however, be better for each officer to make his own notes according to his memory and to

leave it to the Courts to decide on the fate of the confession. If the police officers are properly following procedures, this will become apparent during the voir dire and any minor differences which exist in their evidence will not have an adverse effect.

RECOMMENDATION NO. 1: POLICE OFFICERS SHOULD BE INSTRUCTED NOT TO COPY FROM FELLOW OFFICERS' NOTEBOOKS.

Another problem which we noted with respect to police officers' notebooks was that there were often gaps in the periods of time noted. These gaps at times were accompanied by a brief explanation that the officer was doing paperwork, although there was no record of what the paperwork involved.

In some cases these gaps corresponded with the times during which the complainant alleged that he was being assaulted.

It is vital that any officer who has some contact with a suspect be able to account for his or her whereabouts at all times while the suspect is being interrogated. If a complainant alleges an assault by several officers, it is important to know the whereabouts of every officer who came

into contact with the complainant at the time of the alleged assault. A vague reference to paperwork does not provide sufficient information.

RECOMMENDATION NO. 2: POLICE OFFICERS WHO HAVE HAD SOME CONTACT WITH A SUSPECT IN CUSTODY SHOULD BE REQUIRED TO FULLY ACCOUNT IN THEIR NOTEBOOKS FOR THE PERIOD OF TIME DURING WHICH THE SUSPECT IS BEING INVESTIGATED.

We also noticed that the notebooks used by the Hold-Up Squad detectives did not contain numbered pages, as do the books used by Division constables. Numbered pages act as a precaution that no later changes or deletions can be made to the book without such changes being noticeable. They protect the officer from false charges of alteration by showing that no page has been removed from the book.

RECOMMENDATION NO. 3: THE NOTEBOOKS OF ALL SPECIAL SQUAD OFFICERS SHOULD CONTAIN NUMBERED PAGES.

The Hold-Up Squad officers did not always follow the routine practice of having their notebooks signed daily by a superior officer. This administrative procedure is designed to ensure that the supervisor always has knowledge of the

activities of the officers under his or her supervision and that no later additions are made to the notebooks. It is understandable that at times it may not be practical for the notebook to be signed at the end of each day, considering the nature of detective work and the fact that a detective who is conducting an investigation may report off duty in another area.

It is my opinion that, when investigating a suspect in a police station, all special squad officers should have their notebooks signed by the officer in charge of the station. This should be done immediately after interviewing a suspect as soon as the notes have been completed. Such a procedure would also be in accord with the responsibility of the officer in charge of the station.

RECOMMENDATION NO. 4: THE PROCEDURE WHEREBY POLICE OFFICERS' NOTEBOOKS ARE SIGNED DAILY BY A SUPERVISOR SHOULD BE EXTENDED TO INCLUDE SPECIAL SQUAD OFFICERS. FURTHERMORE, THE NOTEBOOKS OF ALL SPECIAL SQUAD DETECTIVES WHO INTERVIEW A SUSPECT AT A POLICE STATION SHOULD BE SIGNED BY THE OFFICER IN CHARGE OF THE STATION FOLLOWING THE CONCLUSION OF THE INTERVIEW.

B. Police Reports

During the course of a police investigation, a police officer is required to complete many reports dealing with the arrest, charge and detention of a suspect. These reports are to contain the name of the officer preparing the report as well as the date and time of completion. We found that these requirements were not always followed, in particular, the time of preparation of the report.

If these times were always noted, it would facilitate the investigation of any complaint of misconduct. False allegations would be easily detected if the officers could account for all of their time, by properly completing the reports and by making corresponding entries in their notebooks. In many of the cases we investigated, the complainants alleged that the time spent in the interview rooms was much longer than the police officers had stated and that they were beaten during that period of time. The police officers have denied the allegations and have accounted for the period of time by stating that they were doing paperwork. A more complete record would be available if the time were shown on the report and this practice would also help to protect innocent officers from false allegations.

RECOMMENDATION NO. 5: REPORTS WHICH ARE REQUIRED TO BE COMPLETED IN PROCESSING THE ARREST, CHARGE AND DETENTION OF A SUSPECT SHOULD INCLUDE THE TIMES AT WHICH THEY ARE COMPLETED AND THE DATE, AS WELL AS THE NAMES OF THE OFFICERS WHO HAVE ACTUALLY PREPARED THE REPORTS.

C. Responsibility of the Officer in Charge of the Station

According to Police Regulations, when a prisoner is brought into a police station, he or she must be brought before the officer in charge of the station. At that time, the officer in charge must view the prisoner and record any visible injuries on the Record of Arrest. The Record of Arrest also shows the time at which the prisoner is brought into the station. This Record of Arrest must be signed by the officer in charge.

In addition, the officer in charge must record any appearance of injury and any report or complaint of injury on a complaint form. It is also the duty of the officer in charge to enquire as to the cause of any injury and to take any action required in the situation.

If the prisoner is released after interrogation, he or she is brought back to the officer in charge before being released. The officer in charge is required to sign the Record of Arrest at this time as well.

The Regulations clearly indicate that it is the responsibility of the officer in charge to ensure that all procedures are properly followed when a suspect is brought into the station for interrogation. It is also his or her obligation to prevent any abuses of a prisoner who is being questioned in the station. It is also clear from the Regulations that the officer in charge is responsible for the regular observation of prisoners who are being held in the station.

In investigating these cases, I have become aware that, in the case of prisoners who are not released from custody, there does not seem to be any method of regularly recording information relevant to their condition or complaints made by them at any time after they are brought into the station. Thus, a number of officers in charge in these cases, relied solely on the absence of any notation on the Record of Arrest to state that there were no injuries or complaints while the prisoner was in the station. They had no recollection beyond what was shown on the report.

The difficulty of clearly recalling specific prisoners sometime after seeing them is understandable and one of my recommendations below will be directed toward a method of aiding memory.

Another problem was also noted in my review of these cases. It would appear that the lack of recollection displayed by some of the officers in charge appears to stem from lack of close attention paid to the whereabouts and condition of prisoners. Of course, this may be due to the pressure of the many duties of a staff sergeant, particularly on a busy shift. However, it is my view that becoming and remaining conversant with the condition of prisoners in custody is an extremely important element of the staff sergeant's duties.

To assist the officer in charge of the station to carry out his or her responsibility in this regard, I recommend that a new form should be designed which should be used to keep track of a prisoner's condition and movements throughout the time that he or she is in custody. This form should be independent of the Record of Arrest and should deal solely with matters relevant to the prisoner's treatment while in custody, including his or her movements within the station and outside of it, physical condition, and complaints. Part of the form should cover the arrest of the suspect and should note whether or not he or she has any injuries or complains of

any mistreatment when brought into the station. Another part of the form should cover the time when the suspect is in the station, and should note the specific times that each procedure, (e.g. search, interrogation, identification) is taken, up to and including the time when the prisoner is released from the station or is removed from the station to attend jail or court. The form should be signed by both the prisoner and the officer in charge of the station. A copy of the form should be given to the prisoner.

Any notation of injury on this form should result in an immediate investigation by the officer in charge of the station at the time. The officer in charge should be required to submit a report of the injury or investigation to his or her superior officer.

RECOMMENDATION NO. 6: THE OFFICER IN CHARGE OF THE STATION SHOULD MAKE FREQUENT CHECKS AS TO THE CONDITION OF PRISONERS BEING HELD AT THE STATION. THE OFFICER SHOULD BE REQUIRED TO COMPLETE A FORM DESIGNED TO RECORD INFORMATION RELEVANT TO THE CONDITION OF THE PRISONER IN CUSTODY AT INTERVALS WHILE THAT PRISONER IS IN CUSTODY. THE FORM SHOULD BE DESIGNED TO RECORD INJURIES, CONTACT WITH

POLICE OFFICERS, MOVEMENTS WHILE IN CUSTODY AND COMPLAINTS OF HIS TREATMENT.

RECOMMENDATION NO. 7: ANY COMPLAINTS OR INJURIES SHOULD IMMEDIATELY BE INVESTIGATED BY THE OFFICER IN CHARGE OF THE STATION. A REPORT OF THIS INVESTIGATION SHOULD BE SUBMITTED BY THE OFFICER IN CHARGE TO HIS OR HER SUPERIOR OFFICER.

RECOMMENDATION NO. 8: IF A COMPLAINT IS MADE, A COPY OF THIS FORM SHOULD BE FORWARDED TO THE PUBLIC COMPLAINTS INVESTIGATION BUREAU ALONG WITH THE USUAL FORM FOR CITIZEN COMPLAINTS.

Police Regulations make it clear that the officer in charge of a station is responsible for all activities which take place in the station while he or she is on duty. However, in the course of reviewing these complaints, I recognized that there appeared to be some degree of confusion as to whether the Hold-Up Squad officers were aware of their obligation to report to the officer in charge of the station in which they were operating. Clarification of the role of the officer in charge may be needed in these situations.

RECOMMENDATION NO. 9: THE OFFICER IN CHARGE OF THE POLICE STATION SHOULD BE IMPRESSED WITH HIS OR HER RESPONSIBILITY AND ACCOUNTABILITY FOR ANYTHING OCCURRING AT THE STATION UNDER HIS OR HER SUPERVISION.

RECOMMENDATION NO. 10: MEMBERS OF ALL SPECIAL SQUADS SHOULD BE REMINDED THAT WHILE THEY ARE WORKING AT VARIOUS POLICE STATIONS, THE OFFICER IN CHARGE OF THE STATION HAS AUTHORITY OVER THEIR ACTIVITIES.

D. Strip-Searches

During our investigation several complainants alleged that Hold-Up Squad Officers often conducted a strip-search prior to interviewing a prisoner. Several lawyers representing complainants brought to our attention their understanding that such strip-searches are a matter of routine.

I do not believe that the officers who have responsibility for interrogating a prisoner should be involved in a strip-search of that prisoner, because it places the prisoner at a definite disadvantage and could have the effect of embarrassing and intimidating him. Furthermore, in a voir dire, this may

be viewed by the court as a threat and could result in a statement being declared inadmissible as evidence. The Ontario Court of Appeal made a remark to this effect in R. v. McLeod et. al. (1983, unreported).

A strip-search should never be conducted by the investigating officers, but should be carried out by other officers instructed by the officer in charge of the station. These officers should report any injuries seen at the time of the strip-search to the officer in charge, who should conduct an immediate investigation. A careful note should also be made of the absence of any injuries at that time; in the event that injuries are found later, it will be easier to determine when these injuries occurred. For example, in one of the cases I investigated, injuries on the complainant were seen by his lawyer the next day. The officers who conducted the strip-search of the complainant stated that there were no injuries on him at that time. Their memory was prompted by the absence of a notation of injury rather than by a clear statement that there had been no injuries at the time of the strip-search. It would be more useful to the investigation of a complaint if such a statement were made in the notebooks of the officers conducting the strip-search.

I recognize that this procedure might add to the responsibilities of the officer in charge, and possibly add two witnesses to any subsequent voir dire. However, strip-searches obviously are not necessary in every case; in most arrests, a pat-search is sufficient. In any event, I believe that the principle involved is sufficiently important to warrant the following recommendations.

RECOMMENDATION NO. 11: WHERE A STRIP-SEARCH IS CONSIDERED NECESSARY, IT SHOULD BE CONDUCTED BY OFFICERS OTHER THAN THE OFFICERS WHO ARE INTERROGATING THE COMPLAINANT.

RECOMMENDATION NO. 12: THE RESPONSIBILITY FOR ENSURING THAT A STRIP-SEARCH HAS BEEN PROPERLY CONDUCTED SHOULD REST WITH THE OFFICER IN CHARGE OF THE STATION.

RECOMMENDATION NO. 13: THE OFFICER IN CHARGE OF THE STATION OR ANY OFFICER INSTRUCTED BY THE OFFICER IN CHARGE SHOULD NOTE ANY INJURY SEEN ON THE PRISONER'S BODY AT THE TIME OF THE STRIP-SEARCH. ANY INJURIES SEEN AT THIS TIME SHOULD BE IMMEDIATELY INVESTIGATED BY THE OFFICER IN CHARGE OF THE STATION.

E. Detention of a Suspect in an Interview Room

In some of the cases we investigated, police officers noted that complainants had been left alone in interview rooms for periods from one and one-half hours to four hours.

In my opinion, a prisoner should not be left in the interview room once the investigation has been completed. The longer the prisoner remains in an interview room, the more difficult it becomes for an officer to account for his own activity during this time -- a factor which may cause an otherwise proper taking of a statement to result in a ruling that the statement is inadmissible as evidence at trial.

The importance of unwarranted detention to the determination of whether an accused person's statement is voluntary was highlighted by Mr. Justice Martin of the Ontario Court of Appeal in R. v. Precourt (1976) 39 C.C.C. (2d) 311. In that case, the accused had been questioned after his arrest, had denied involvement in a robbery, was charged, and appeared in Provincial Court. However, after his court appearance he was returned to the police station and questioned further for several hours. When the accused was admitted to the jail that evening, he had bruises and burn marks on his back, which he said had been inflicted by the police.

Mr. Justice Martin made the following observations:

> "The unwarranted detention of the appellant at the police station did not of itself preclude the appellant's confession from being voluntary but it was a relevant circumstance to be weighed by the trial Judge in deciding whether the onus resting upon the prosecution to prove that the statement was voluntary had been discharged. With respect, I think the trial Judge erred in failing to appreciate the significance of the unusual delay in conveying the appellant to the provincial jail, and its relevance to the issue whether the prosecution had discharged the onus, in the circumstances, of proving that the statement was voluntary: see R. v. Koszulap (1974), 20 C.C.C. (2d) 193, 27 C.R.N.S. 226.

Another issue that became evident was the need for a clear record kept of all movement to and from the cells. The lack of such notation became apparent during the investigation of one of the complaints, when the Staff Sergeant indicated that he had a recollection of one of the Hold-Up Squad officers removing a prisoner from the cell area but he could not remember which prisoner. He stated that he did not make a notation of all such movements. In that case, there was some issue as to whether the complainant was removed from the cells on more than one occasion. A notation would have facilitated the investigation of this aspect of the complaint.

RECOMMENDATION NO. 14: SUSPECTS SHOULD NOT BE DETAINED IN INTERVIEW ROOMS LONGER THAN NECESSARY. WHEN THE INVESTIGATION HAS

BEEN COMPLETED THE SUSPECT SHOULD EITHER BE RELEASED OR TAKEN TO THE CELL AREA.

RECOMMENDATION NO. 15: A RECORD SHOULD BE KEPT BY THE OFFICER IN CHARGE OF THE STATION OF ALL MOVEMENTS OF A PRISONER TO AND FROM THE CELLS. THIS RECORD SHOULD CONTAIN THE NAMES OF THE PRISONER AND THE ESCORTING OFFICERS, AS WELL AS THE TIMES OF THE MOVEMENTS. (See Recommendation No. 6).

F. The Description Sheet Used by the Identification Bureau

While investigating these complaints, it came to my attention that the Description Sheet used by the Identification Bureau does not contain a space in which recent injuries are recorded. Rather, it asks only for scars and marks of a permanent nature, which could be used later for the description of a suspect. During the trial of one complainant, an officer who worked in the Identification Bureau testified that he would record recent injuries, if these were visible, even though the form had no section for this notation. He stated that this was a policy followed by the officers in the Identification Bureau, although it had nothing to do with the

traditional function of the Identification Bureau, which is the obtaining of a description. The officer stated that these injuries are listed on the Description Sheet for purposes of a later description. Other injuries are noted, even if transient or minor, if they are noticeable or if a complaint is made about them. He testified that this policy has been followed for the past three or four years. There have been proposals to change the form used in order to accommodate this function, but the form has not yet been changed.

The absence of any requirement on the form that such an inquiry be made would mean that any notation of injuries will depend on the discretion of the individual officer. The officers at the Identification Bureau could serve as the last check against any potential abuses or any unfounded allegations, by making a note of any recent injuries, no matter how trivial, on the Description Sheet. Moreover, if a complaint is made to them, they should make a notation of this complaint and inform their superior of the matter. He or she in turn should notify the officer in charge of the station where the alleged misconduct occurred.

RECOMMENDATION NO. 16: THE DESCRIPTION SHEET USED BY THE IDENTIFICATION BUREAU SHOULD BE AMENDED TO PROVIDE A SPACE WHEREIN RECENT INJURIES AND COMPLAINTS CAN BE NOTED.

RECOMMENDATION NO. 17: ANY COMPLAINT WHICH IS BROUGHT TO THE ATTENTION OF IDENTIFICATION BUREAU OFFICERS SHOULD BE IMMEDIATELY REPORTED TO THEIR SUPERIOR. THE MATTER SHOULD ALSO BE REPORTED TO THE OFFICER IN CHARGE OF THE DIVISION WHERE THE ALLEGED MISCONDUCT OCCURRED.

G. The Role of Counsel

Defence counsel have an important role to play in protecting their clients against the possibility of abuse by the police authorities and in ensuring that any complaints of police misconduct are brought out in the open, either by adducing evidence of such during the client's trial or by lodging a complaint with the appropriate authorities. Any evidence which will assist either the investigation of the complaint or the determination of the voluntariness of a statement during the *voir dire* at trial must be preserved at the earliest opportunity.

In one of the cases we investigated, one of the lawyers saw bruises on both complainants the day after their interrogation. This lawyer remained on the record as the complainant's counsel and the evidence of his observations was not led during the *voir dire*. The trial Judge ruled that the

statements made to the police officers were voluntarily obtained and admissible. If this evidence had been led by the defence, the result might have been a different decision by the trial Judge. Another lawyer, who removed himself from the record and testified as to injuries he observed on his client, was found by the trial Judge to be honest, but mistaken. This situation might not have arisen had photographs of the client been taken.

RECOMMENDATION NO. 18: DEFENCE LAWYERS SHOULD BE ADVISED THAT IF THEY NOTICE INJURIES ON THEIR CLIENTS, THEY SHOULD ENSURE THAT ANY EVIDENCE OF THESE INJURIES IS PROPERLY RECORDED AND PRESERVED.

I am forwarding this recommendation to the Law Society of Upper Canada and to the Criminal Lawyers' Association for their consideration.

H. Video Taping at Police Stations

One of the major changes recommended by some members of the defence bar is the installation of video equipment in interview rooms at police stations for the purpose of recording interrogations of suspects. This topic has recently been discussed in the media, studied by the Law Reform Commission

of Canada and has also been commented upon by members of the Bench. Because of the innovation and complexity of this reform, I have chosen to devote Part IV of this Report to an examination of this topic.

I have recently had occasion to visit and observe the operation of such a system which has been functioning successfully in New York City since 1975.

The many reasons for the advisability of video taping at police stations are set out in detail in Part IV of this Report.

RECOMMENDATION NO. 19: A PILOT PROJECT SHOULD BE ESTABLISHED TO IMPLEMENT THE USE OF VIDEO TAPE RECORDING IN METROPOLITAN TORONTO. THE PROJECT SHOULD BE OF AT LEAST TWO YEARS' DURATION, AND BE SUBJECT TO EVALUATION AT THE END OF THAT TIME.

SUMMARY OF RECOMMENDATIONS

Re Notebooks

RECOMMENDATION NO. 1: POLICE OFFICERS SHOULD BE INSTRUCTED NOT TO COPY FROM FELLOW OFFICERS' NOTEBOOKS.

RECOMMENDATION NO. 2: POLICE OFFICERS WHO HAVE HAD SOME CONTACT WITH A SUSPECT IN CUSTODY SHOULD BE REQUIRED TO FULLY ACCOUNT IN THEIR NOTEBOOKS FOR THE PERIOD OF TIME DURING WHICH THE SUSPECT IS BEING INVESTIGATED.

RECOMMENDATION NO. 3: THE NOTEBOOKS OF ALL SPECIAL SQUAD OFFICERS SHOULD CONTAIN NUMBERED PAGES.

RECOMMENDATION NO. 4: THE PROCEDURE WHEREBY POLICE OFFICERS' NOTEBOOKS ARE SIGNED DAILY BY A SUPERVISOR SHOULD BE EXTENDED TO INCLUDE SPECIAL SQUAD OFFICERS. FURTHERMORE, THE NOTEBOOKS OF ALL SPECIAL SQUAD DETECTIVES WHO INTERVIEW A SUSPECT AT A POLICE

STATION SHOULD BE SIGNED BY THE POLICE OFFICER IN CHARGE OF THE STATION FOLLOWING THE CONCLUSION OF THE INTERVIEW.

Re Reports

RECOMMENDATION NO. 5: REPORTS WHICH ARE REQUIRED TO BE COMPLETED IN PROCESSING THE ARREST, CHARGE AND DETENTION OF A SUSPECT SHOULD INCLUDE THE TIMES AT WHICH THEY ARE COMPLETED AND THE DATE, AS WELL AS THE NAMES OF THE OFFICERS WHO HAVE ACTUALLY PREPARED THE REPORTS.

Re Responsibility of Officer in Charge of Station

RECOMMENDATION NO. 6: THE OFFICER IN CHARGE OF THE STATION SHOULD MAKE FREQUENT CHECKS AS TO THE CONDITION OF PRISONERS BEING HELD AT THE STATION. THE OFFICER SHOULD BE REQUIRED TO COMPLETE A FORM DESIGNED TO RECORD INFORMATION RELEVANT TO THE CONDITION OF THE PRISONER IN CUSTODY AT INTERVALS WHILE THAT PRISONER IS IN CUSTODY. THE FORM SHOULD BE

DESIGNED TO RECORD INJURIES, CONTACT WITH POLICE OFFICERS, MOVEMENTS WHILE IN CUSTODY AND COMPLAINTS OF MISTREATMENT.

RECOMMENDATION NO. 7: ANY COMPLAINTS OR INJURIES SHOULD IMMEDIATELY BE INVESTIGATED BY THE OFFICER IN CHARGE OF THE STATION. A REPORT OF THIS INVESTIGATION SHOULD BE SUBMITTED BY THE OFFICER IN CHARGE TO HIS OR HER SUPERIOR OFFICER.

RECOMMENDATION NO. 8: IF A COMPLAINT IS MADE, A COPY OF THIS FORM SHOULD BE FORWARDED TO THE PUBLIC COMPLAINTS INVESTIGATION BUREAU ALONG WITH THE USUAL FORM FOR CITIZEN COMPLAINTS.

RECOMMENDATION NO. 9: THE OFFICER IN CHARGE OF THE POLICE STATION SHOULD BE IMPRESSED WITH HIS OR HER RESPONSIBILITY AND ACCOUNTABILITY FOR ANYTHING OCCURRING AT THE STATION UNDER HIS OR HER SUPERVISION.

RECOMMENDATION NO. 10: MEMBERS OF ALL SPECIAL SQUADS SHOULD BE REMINDED THAT WHILE THEY ARE WORKING AT VARIOUS POLICE STATIONS, THE OFFICER IN CHARGE OF THE STATION HAS AUTHORITY OVER THEIR ACTIVITIES.

Re Strip-Searches

RECOMMENDATION NO. 11: WHERE A STRIP-SEARCH IS CONSIDERED NECESSARY, IT SHOULD BE CONDUCTED BY OFFICERS OTHER THAN THE OFFICERS WHO ARE INTERROGATING THE COMPLAINANT.

RECOMMENDATION NO. 12: THE RESPONSIBILITY FOR ENSURING THAT A STRIP-SEARCH HAS BEEN PROPERLY CONDUCTED SHOULD REST WITH THE OFFICER IN CHARGE OF THE STATION.

RECOMMENDATION NO. 13: THE OFFICER IN CHARGE OF THE STATION OR ANY OFFICER INSTRUCTED BY THE OFFICER IN CHARGE SHOULD NOTE ANY INJURY SEEN ON THE PRISONER'S BODY AT THE TIME OF THE STRIP-SEARCH. ANY INJURIES SEEN AT THIS TIME SHOULD BE INVESTIGATED IMMEDIATELY BY THE OFFICER IN CHARGE OF THE STATION.

Re Detention of Suspect in Interview Room

RECOMMENDATION NO. 14: SUSPECTS SHOULD NOT BE DETAINED IN INTERVIEW ROOMS LONGER THAN NECESSARY. WHEN THE INVESTIGATION HAS BEEN COMPLETED THE SUSPECT SHOULD EITHER BE RELEASED OR TAKEN TO THE CELL AREA.

RECOMMENDATION NO. 15: A RECORD SHOULD BE KEPT BY THE OFFICER IN CHARGE OF THE STATION OF ALL MOVEMENTS OF A PRISONER TO AND FROM THE CELLS. THIS RECORD SHOULD CONTAIN THE NAMES OF THE PRISONER AND THE ESCORTING OFFICERS, AS WELL AS THE TIMES OF THE MOVEMENTS.

Re Description Sheets Used by Identification Bureau

RECOMMENDATION NO. 16: THE DESCRIPTION SHEET USED BY THE IDENTIFICATION BUREAU SHOULD BE AMENDED TO PROVIDE A SPACE WHEREIN RECENT INJURIES AND COMPLAINTS CAN BE NOTED.

RECOMMENDATION NO. 17: ANY COMPLAINT WHICH IS BROUGHT TO THE ATTENTION OF IDENTIFICATION BUREAU OFFICERS SHOULD IMMEDIATELY BE REPORTED TO THEIR SUPERIOR. THE MATTER SHOULD ALSO BE REPORTED TO THE OFFICER IN CHARGE OF THE DIVISION WHERE THE ALLEGED MISCONDUCT OCCURRED.

Re The Role of Counsel

RECOMMENDATION NO. 18: DEFENCE LAWYERS SHOULD BE ADVISED THAT IF THEY NOTICE INJURIES ON THEIR CLIENTS, THEY SHOULD ENSURE THAT ANY EVIDENCE OF THESE INJURIES IS PROPERLY RECORDED AND PRESERVED.

Re Video Taping

RECOMMENDATION NO. 19: A PILOT PROJECT SHOULD BE ESTABLISHED TO IMPLEMENT THE USE OF VIDEO TAPE RECORDING IN METROPOLITAN TORONTO. THE PROJECT SHOULD BE OF AT LEAST TWO YEARS' DURATION AND BE SUBJECT TO EVALUATION AT THE END OF THAT TIME.

Part IV THE USE OF VIDEO TAPE TO RECORD POLICE INVESTIGATIONS

Recently there has been much attention devoted in the media to the topic of video taping police interrogations. This is an issue which has been debated for some time by members of the media, studied by the Law Reform Commission of Canada and commented upon by some members of the bench.

In the Recommendations part of this Report I have suggested that a two year pilot project to implement video taping of police interaction with suspects be established in Metropolitan Toronto. In this part of the Report I will outline the legal issue that underlies the video tape debate, present the views of some proponents of the use of video tape, review the arguments for and against the use of this technology, and examine the practical issues that have arisen in regard to the implementation of video tape systems in several other jurisdictions.

A. The Law Regarding the Admissibility at Trial of Statements Made to the Police

Discussion about the video taping of police interrogations has arisen in response to concerns about the voluntariness of

statements given by suspects to the police. These concerns reflect a basic rule of our criminal law.

Before a statement made by an accused person to a police officer can be introduced into evidence by the prosecution, the Crown must be able to prove beyond a reasonable doubt that this statement was made voluntarily and was not obtained by fear, the use of violence or the threat of violence, nor induced by the hope of an advantage inspired by a person in authority.

This issue is determined during a voir dire which is a hearing conducted in the absence of the jury. The obligation is on the Crown to call as witnesses the police officers to whom the statement was made as well as any other police officers whose conduct might have affected the suspect. (See Erven v. The Queen (1979), 44 C.C.C. (2d) 76 (S.C.C.).) As stated by Mr. Justice Kerwin in Boudreau v. The King (1949) 94 C.C.C. 1, [1949] 3 D.L.R. 81, [1949] S.C.R. 262, at p. 3 C.C.C., p. 83 D.L.R., p. 267 S.C.R.: "all the surrounding circumstances must be investigated and, if upon their review the Court is not satisfied of the voluntary nature of the admission, the statement will be rejected."

There are two schools of thought which have sought to define the reason for the exclusionary rule that a statement

which was not voluntarily obtained should be inadmissible as evidence. These two notions can be labelled reliability and fairness. The notion of reliability questions the truth of a statement which was obtained under duress or under promise of an advantage. A court should be reluctant to accept a statement which is made under these circumstances because there exists a real likelihood that the statement is not true. There is a real fear that a person who is threatened with violence or promised a reward will agree to say anything.

The second notion, which draws heavily from ideas of public policy, is that fairness dictates against letting the police use coercion in obtaining a statement. This theory does not concern itself with the veracity or falsehood of the statement; rather the methods used by the police to obtain a statement may be considered so repugnant to the principles of fairness that the statement must be excluded. It is believed that such a drastic measure will inhibit the police from being tempted to resort to violence in order to get a statement from a reluctant suspect. According to this theory, the police will be forced to respond to public outcry and to use proper procedures if enough charges are dismissed because the statements have been ruled inadmissible.

Recent Supreme Court of Canada cases have broadened the test of voluntariness beyond fear of prejudice or hope of

advantage. The Court has considered the state of mind of the accused and looked for the impact of the police method of interrogation on the accused.

One of the most significant cases in the development of the law of confessions in Canada is the decision of the Supreme Court of Canada in Horvath v. The Queen (1979), 44 C.C.C. (2d) 385. In that case, the Court ruled inadmissible a series of oral utterances made by the accused person while he was in a state of hypnotism induced by the method of interrogation used by the officer during the interview. The trial Judge had found that the officer had not intentionally induced the hypnotic state into which the accused had fallen, but the effect nonetheless was the "complete emotional disintegration" of the accused person. The trial Judge ruled the statements inadmissible and the Supreme Court of Canada upheld this ruling.

Mr. Justice Spence, in a decision concurred in by Mr. Justice Estey, ruled that the test of voluntariness has a wider meaning beyond the traditional test of hope of advantage or fear of prejudice. The learned Justice reviewed the various authorities on the law of confessions and concluded that oppression was definitely a factor to be considered by a court in determining whether or not a statement made to the police authorities was voluntarily obtained. He stated that a

statement, to be admissible, must be made of the accused's own free will.

Mr. Justice Beetz agreed with the result obtained by Mr. Justice Spence, but stated that he was limiting his ruling to the narrower ground of involuntary hypnosis. He ruled that the impact of hypnosis on the accused, albeit unintentional, had resulted in "moral violence" being used against the accused person.

In another case, Ward v. The Queen (1979) 44 C.C.C. (2d) 498, the Supreme Court of Canada made it clear that a subjective standard should be used in determining whether an accused person, who was in a state of shock following a car accident, had given a statement "freely and voluntarily." Despite the fact that there had been no hope of advantage or fear of prejudice, the Supreme Court upheld the trial Judge's exclusion of the statement as not voluntarily made. Some limits to the subjective standard were suggested in Hobbins v. The Queen (1982) 66 C.C.C. (2d) 289 (S.C.C.); the Supreme Court of Canada stated (at p. 292) that:

> "... An accused's own timidity or subjective fear of the police will not avail to avoid the admissibility of a statement or confession, unless there are external circumstances brought about by the conduct of the police that can be said to cast doubt on the voluntariness of a statement or confession by the accused, or there are considerations

> affecting the accused ... which would justify doubt as to voluntariness."

However, the Court noted that:

> "An atmosphere of oppression may be created in the circumstances surrounding the taking of a statement, although there be no inducement held out of hope of advantage or fear of prejudice and absent any threats of violence or actual violence.... In this respect, it does not, of course, matter that the police did not commit any illegality, if the circumstances of the interrogation, including time and place and length of interrogation, raise or should raise doubt in the trial Judge, that the statement or confession was freely and voluntarily given."

These cases show that the main consideration of the Supreme Court of Canada tends to be the voluntariness of the statement and the manner in which the police have behaved on that occasion, as opposed to the veracity of the statement. In Horvath, at p. 430 of the reported judgment, Mr. Justice Beetz, stated that the sole purpose of the voir dire remains to determine voluntariness and inadmissibility and that at that stage, the veracity of a confession was irrelevant.

> "Apart from the untrustworthiness of confessions extorted by threats or promises, other policy reasons have also been advanced to explain the rejection of confessions improperly obtained. But the basic reason is the accused's absolute right to remain silent either completely or partially, and not to incriminate himself unless he wants to. This is why it is important that the accused understand what is at stake in the procedure. In a voir dire, voluntariness,

> not veracity, governs admissibility. Dr. Stephenson's expert opinion as to the truthfulness of Horvath's confessions is accordingly not determinative of the issue of admissibility."

As noted in the above cases, the court must consider all circumstances that might have a bearing on whether a statement was voluntarily made. The complexity of this inquiry was suggested by Mr. Justice Rand in R. v. Fitton (1956), 116 C.C.C. 1, 6 D.L.R. (2d) 529, [1956] S.C.R. 958, at p. 5 C.C.C. 532-33 D.L.R., p. 962 S.C.R.:

> "The cases of torture, actual or threatened, or unabashed promises are clear; perplexity arises when much more subtle elements must be evaluated. The strength of mind and will of the accused, the influence of custody, and surroundings, the effect of questions or of conversation, all call for delicacy in appreciation of the part they have played behind the admission, and for the Court to decide whether what was said was freely and voluntarily said, that is, was free from the influence of hope or fear aroused by them."

Given the relevance of all the circumstances, it is obvious that a visual recording, or at the very least an audio recording of the interrogation, would be of immense assistance to the courts. It is interesting to note that the trial Court in the Horvath case was greatly assisted by the fact that the conversations between the accused and police officer had been taped. The expert witness who testified during the trial as to the emotional state of the accused man was able to give an

opinion on the effect of hypnosis because he could hear the tone of the accused's voice, which led the expert to conclude that Mr. Horvath was indeed in a state of hypnosis. This decision could never have been made without the use of the tape recording, as the sole record that the Court would otherwise have had to rely on would have been the officer's written notes about the interrogation.

B. Proponents of the Use of Video and Audio Apparatus

1. Ontario Judges

On occasion, Ontario judges have commented on the desirability of video or audio recording of police interrogations as a means of assisting the court in making this very complex assessment.

In R. v. Vangent and Green (1978), 42 C.C.C. (2d) 313, his Honour Provincial Court Judge Langdon criticized the method by which judges were called upon to decide the circumstances under which a statement had been made to the investigating officers. At page 328 of the reported judgment, he stated:

> "The point of the matter is that again procedures adopted by the police in a setting which the police entirely control, have effectively negatived the Court obtaining the best evidence. This Court has had occasion to comment on this unfortunate practice on previous cases. In the decision

of R. v. James J. Byrne (unreported) released January 26, 1978, the Court then had occasion to comment upon a confession which in that case was admitted in evidence in a trial on a charge of rape. In dealing with the issue of what weight should be attached to the statement of the accused, the Court said at p. 25:

> ... at the time of the voir dire, and on previous occasions, this Court deplored the failure indeed the refusal of the police department in this jurisdiction to record prisoner interviews in accordance with the fact that we are now in the 20th century, not the 19th, and that the Court is entitled to the best evidence that can be got, not just in accordance with what happens to be convenient. There is little to stand in the path of making video tape recordings of the images and sounds in the interview room. There is less, in fact almost nothing, blocking the use of a sound recording device even one as simple as the simple inexpensive (and ubiquitous) cassette recorder to record the sounds of interviews, it is emphatically not an answer to say that the defence will challenge the integrity of the recording. Of course it will, but it is especially in serious cases like this, far and away easier to guarantee the integrity of the tape recording than the accuracy of human recollection, after the event as recorded by the two officers acting in concert, on what is essentially one set of notes. It is no tribute to the primitive practices employed in this case that ex. "A" (the confession) squeeked through the voir dire by the skin of it's teeth. The Court intends no criticism of the individual officers involved; they work with the tools they are given, but the Court is entitled not only to the best recollection of statements made as dispassionately related by a trained policeman. Where possible the Court is entitled to be as

> effectively present at the taking of the statement as it could be if the sounds and images were recorded. The Court is entitled to hear and weigh the intentions (sic) of voice, the shades of meaning and nuances of words and gestures in coming to a conclusion. Those would be available and apparent in a recording.... The facilities are easily available but not employed. In serious cases, in a police interview room, so called, in this urban and sophisticated jurisdiction, that that occurs is fact which unfortunately is capable of the inference that law enforcement officers have in their methods of interrogation something to conceal or at the very least that they are indifferent to the right of the judicial process to the best evidence. I believe that not only the Courts, but more particularly the citizen who is arrested and interrogated, are entitled to better justice. If interviews are properly conducted, confessions will then be admitted and doubts removed; if not, they quite properly will be excluded. Either way the administration of justice wins...."

In the unreported judgment of R. v. Prihoda, September 28, 1978, his Honour Judge Shapiro of the Ontario County Court stated that he agreed with the suggestion of defence counsel that police interrogations should be video taped. He stated:

> It is a suggestion that is a good one, I have made it on other occasions and that is not only to protect the person who is arrested and charged, but also to protect the police from spurious and improper and unfounded complaints: Complaints that are sometimes made against them. Sometimes a person is charged with an offence and his immediate reaction in defence is to make an allegation that he has been assaulted and I

> think that the taping of such interrogations would be a protection for both the person charged and the interrogating officers.... It is a matter -- maybe one of the practical aspects is of dollars and cents, but I think in the long run it would be a saving."

2. Legal Writers, Commissions, Inquiries

In recent years, a number of legal scholars have also published their views on the subject of recording police interrogations, as have England's Criminal Law Revision Committee, the Manitoba Police Commission and, most recently, the Canadian Law Reform Commission.

a) Professor Glanville Williams

In an article, "The Authentication of Statements to the Police," (1979) Crim. L.R. 6, Professor Williams advocated the electronic recording of interrogations as a safeguard against abuse by the police authorities. Professor Williams sat on England's Criminal Law Revision Committee, a standing committee set up by the Home Secretary in 1959 to consider aspects of criminal law referred to it by the Home Secretary. Professor Williams was one of a minority of three members of the Criminal Law Revision Committee who recommended that all interrogations in police stations in large centres of population should be electronically recorded and that no confession

that was unrecorded should be admitted in evidence during trial proceedings. The majority of this Committee, while on the whole favourable to the idea, recommended that experiments should first be made as to the feasibility of this proposed change. According to Professor Williams, this proposal was not acted upon because of the strong objections of the higher ranks of the police force. Professor Williams was in favour of electronic recording as a means of aiding the defence when an issue arises as to the admissibility of a statement. At page 7 of the article, he writes:

> "The recording could reveal the whole relevant part of the conversation, question and answer, with its intonation and emphasis. It would also show (if it were complete enough) the kind of pressure that was put on the suspect during the interview."

Professor Williams also suggests that the installation of this equipment could ensure against anything being misunderstood by the police when reducing the statement to writing. The danger of unreliable evidence is increased when there is no signed statement and the officers are relying strictly on what they had written in their notebooks. In most cases when the police officers merely record the accused persons' utterances into their notebooks, they do not show their notes of the interview to the suspect, much less ask him to agree whether the notes represent a fair account of what he has said to them.

b) Peter McWilliams

After the allegations against the Hold-Up Squad were made public in 1981, Peter McWilliams noted author of Canadian Criminal Evidence, submitted an article to the Criminal Lawyers Association Newsletter, December 1981, in which he advocated the use of video tape equipment to record police interrogations of suspects in the police station. (See Peter McWilliams, "A Call for Installation of Video Tape Equipment in Police Interrogation Rooms," Criminal Lawyers Association Newsletter, December 1981, Vol. 4, No. 8, p. 25.) McWilliams stated that it was virtually impossible for an accused person to successfully challenge the evidence of two or more police officers who could corroborate each other in saying that nothing improper took place during the interrogation.

> "The almost invariable preference of the police for two or more police officers to interrogate a single accused in private rooms is one which invites abuse because there is only the accused to complain and no one to corroborate his complaint, while the two police officers can corroborate each other in denying any allegations. In short, it is the accused's word against two stalwart police officers who are moreover experienced and often impressive witnesses, while the accused may be a callow, inarticulate youth or a scurvy rogue."

Mr. McWilliams argues that lawyers should actively support the installation of video tape equipment, as it would prevent the abuses of which many lawyers are aware, but have not

spoken out against in the past. He recommended that video tape equipment be installed in interrogation rooms, with clocks in view to protect against possible editing of the confession.

c) Judge J.L. McCrystal

In an article entitled, "Will Electronic Technology Take the Witness Stand," University of Toledo Law Review (Winter 1980) 247, Judge McCrystal strongly urged the use of video tape equipment to record police interrogations. He expressed the opinion that courts were presented with second-hand evidence of what actually occurred during a police investigation. "Police officers, victims, suspects, other witnesses are compelled to rely solely on their memories in attempting to recreate for the judge and jury the true picture of the event in question. It is the potential inaccuracy, inconsistency, bias, and prejudice in the testimony of these individuals that create the puzzle for the judge, jury, and attorneys to solve." Among other things, he recommended that all conversations between suspects and interrogating officers be video taped as this would assist the court in determining the circumstances surrounding the taking of the statement.

> "The court would observe the conditions under which the interrogation was conducted, what questions were asked, how they were asked, and whether the suspect understood

> them. The court would no longer be required to review the signed confessions whose claimed duration was thirty minutes, but when reduced to writing amount to only three brief typewritten pages. By video taping the entire interrogation procedure, there would be no doubt as to what transpired between questions and answers, as to the behaviour of the suspect (how did he respond, was he tense or relaxed, standing or sitting, drinking coffee or smoking?), nor as to whether officers intimidated the suspect by their choice of words or tone of voice.
>
> The use of audio and video tape in the criminal process would serve to protect both the defendant and the state. It would save time, eliminate uncertainty and expose or prevent unscrupulous law enforcement tactics. But, most importantly, the use of video tape would aid in the discovery of the truth."

d) Other Writers

Other writers have spoken in favour of video taped confessions. (See Alan D. Gold, "Police Notebooks: Collaboration" (1978-1979) 21 Criminal Law Quarterly 32 at pp. 36-37: F. Kaufman, The Admissibility of Confessions (3d) 1978: Carswell Co. at p. 142: Stanley A. Cohen, Due Process of Law (1977): Carswell Co. at p. 129. In Self Incrimination in Canadian Criminal Procedure (1979) Carswell Co. at p. 272, Professor Ratushny states:

> "... problems of the effectiveness of the warning and the difficulty of weighing the credibility of conflicting accounts have led to the further recommendations that detailed logs be kept by the police of every step in

> the incarceration and interrogation and that statements be tape recorded. The next logical step would be to require audiovisual recording of the accused's entire presence with the police...."

e) Royal Commission on Criminal Procedure

In 1977, the Home Office referred the matter of the recording of police interrogation (on which recommendations had earlier been made by the Criminal Law Revision Committee) to the Royal Commission on Criminal Procedure.

The Commission arranged for several research studies dealing with interrogation by police officers. A number of these studies advocated video and/or audio recording, and one lengthy study (which is referred to later in this Report) included a limited experiment in order to assess the implementation of such a system.

> Research Study No. 1, Police Interrogation: The Psychological Approach, examined the psychological manipulation of police interrogations. The research isolated various factors which could have an effect on a suspect during interrogation. These factors were: 1) the power of the police to determine important matters, such as the charge the suspect will face, the length of time he will be detained, his prospects for bail; 2) the ability of the interrogator to manipulate a basic desire in the suspect for esteem and social approval; 3) the fact that the suspect views the interrogator as an expert on such matters as the likelihood of conviction and the possibility of obtaining a lesser sentence if he were to plead

guilty. The authors of the report concluded that these factors either singly or in combination, could very well lead to the making of a false confession if the suspect believed that it would be to his advantage to confess. It was the opinion of the authors that a trained observer would be able to detect such manipulation but only if he or she had a complete visual and sound record.

Research Study No. 2, Police Interrogation: A Case Study of Current Practice, examined the techniques used by police officers to question suspects. The author of this study was of the opinion that it was difficult to assess the effect of the manner of interrogation on a suspect, and he further wondered about the difficulty that the legal process would undergo in evaluating the voluntariness of the confession simply by eliciting the facts about the interview from the police officers' own perception of the mental state of the accused.

Research Study No. 3, Police Interrogation: Review of Literature, examined ways in which police activities could be better controlled. In particular, it devoted some time to the use of tape and video recordings of police interrogation. The author of the study looked at several jurisdictions where tape recording was employed and evaluations of this technique had been made. These evaluations had concluded that a tape recording provides a far superior record of an interrogation than could otherwise be obtained from a dictated and signed confession. It enables the listener to make his own judgment as to whether coercive or oppressive tactics were used by the police officers when interviewing the suspect. One New York study pointed out, however, that no sound recording would be able to draw the distinction between legitimate questioning techniques and those that take unfair advantage of the suspect.

Research Study No. 6, Contested Trials in Magistrates' Court: The Case for the Prosecution, examined a sample of contested cases in six magistrates' courts. Half of the

alleged oral statements were denied by the accused at the trial, and 39% of the written statements were disputed on grounds of voluntariness. The author of this study concluded that the frequency with which oral statements were denied and the low dismissal rates where incriminating statements were disputed, raised the question whether existing procedures were sufficient to authenticate this type of evidence in court.

f) The Manitoba Police Commission

The Manitoba Police Commission in the Frampton Inquiry Report, released July 31, 1979, also recommended the installation of video tape equipment. The Commission had undertaken an inquiry into alleged mistreatment by members of the Police Department of the City of Winnipeg while the complainant John Francis Frampton was detained in the police station in July, 1976. The Commission, as part of its study, examined ways in which procedures could be implemented to avoid a similar situation arising again. One such procedure was the use of video tape equipment in order to ensure more supervision of the interview room. The Commission engaged an expert in installation of electronic surveillance equipment to explain the feasibility of this proposal. This witness attended at the police station to determine whether it was practical to install video recording equipment. He concluded that it could be done at a cost of $4,500 to $5,000 for installation in each room.

The Commission concluded that the installation of this equipment would serve to protect both police officers and persons being interviewed. The equipment would assist the supervision which the Commission felt was necessary in such rooms.

This recommendation has not, as yet, been implemented.

g) The Law Reform Commission of Canada

Recently the President of the Law Reform Commission of Canada has called for the visual recording of all police interrogations. At a conference of the Canadian Association for the Prevention of Crime, held November 23-25, 1983 in Ottawa, Mr. Justice Linden stated that the use of video tape recording would serve to protect the suspect from coercion as well as the police from unfounded allegations of brutality. He stated that the Law Reform Commission is currently preparing proposals for legislation which would require the taping of all statements by suspects, although such proposals could be implemented without legislation. He emphasized that the public would be "the big winner", since there would no longer be "these interminable fights as to whether duress was used, the eye will have recorded it all". Mr. Justice Linden predicted that more guilty pleas or withdrawals would result from the implementation of video taping. (Ontario Lawyers Weekly, December 23, 1983.)

The Law Reform Commission of Canada has proposed that electronic recording should be done wherever feasible. If it is not feasible the police should be obliged to prepare a written record of the interrogation which would show all the questions and answers. The record should contain a note of what time the questioning began and concluded, a note of interruptions in the questioning, the names of all persons present during the questioning and the time at which the record was made. The Commission also recommends that a statement obtained from a suspect in contravention of the proposed rules should be inadmissible unless the prosecution can establish that the failure to comply is merely a defect of form or a trifling irregularity of procedure. (See Patrick Healy, "Steps to Police Reform," The Globe and Mail, Thursday, December 8, 1983.)

C. Arguments in Favour of the Use of Video Taped Confessions

1. Accuracy

The strongest argument in favour of the installation of video tape recording equipment in police interrogation rooms is that this equipment would permit an accurate record to be made of what takes place in the interview room. It would show

the method of questioning used by the police officers and the effect that this method had on the suspect. It would also show whether there was any pressure or force used on the suspect. As stated by Professor Williams in his article, "The Authentication of Statements to the Police," at page 7:

> "Electronic recording would be a great advantage to defendants who are genuinely contesting at the trial that they intended to make an admission under interrogation. The recording could review the whole relevant part of the conversation, question and answer, with its intonation and emphasis. It would also show, if it were complete enough, the kind of pressure that was put on the suspect during the interview."

It is essential that the courts know everything that takes place while the accused is in custody in order to accurately determine whether or not the statement made to the police officers was voluntarily obtained. A visual record would be of immense assistance in this task and would certainly be more revealing than merely an audio recording of the interview. While an audio recording would show the intonation used by the police officers and would reveal any manifestations of anxiety in the voice of the suspect, it could not show, for example, whether any threatening gestures were made by police officers during the interrogation. A video tape recording picks up gestures, facial expressions and other relevant features of the communication between officer and suspect.

2. Eventual Clarification of Misunderstandings

In any conversation, one speaker may misunderstand the other. The possibility of misunderstanding is heightened where a party to a conversation is nervous or fatigued, the situation is emotionally charged or one party is not fluent in the language being spoken. Any of these factors may obtain in the interrogation of a suspect to a crime. The fact that there has been a misunderstanding may not become evident until the trial.

The practise of having a suspect sign the written statement that he or she has given is intended as a safeguard against such misunderstandings. However, the suspect may sign despite the fact that the statement contains something that he or she did not say or did not mean, where the suspect has problems with literacy or English fluency or where he or she has not read the statement very carefully. Furthermore, frequently there is no written statement, but merely an oral utterance which the police note down for use in court. In the latter situation, where an oral statement is taken, Professor Williams has suggested that the note be read back to the suspect and that he or she should be asked to sign the officer's notebook to acknowledge the correctness of the statement. This solution, however, does not completely solve the problem. The

suspect may refuse to sign the book or may not, for the reasons noted above, notice the misconstruction.

When counsel for the accused raises the possibility of misunderstanding at trial, the Crown can usually do no more than ask the police officers if they took any special precautions to guard against misunderstanding and invite them to give their opinion as to whether they were understood. Video tape recording would enable the court to itself review the manner in which a question was asked, the speed of the conversation and whether the exact words could be construed equivocally.

3. Protection from Abuse

The use of video tape equipment would protect all citizens whether accused persons or witnesses, against the potential for abuse at the hands of the interrogating police officers. This is not to say that abuses do in fact occur, but the possibility for something untoward to take place in a closed interrogation room is a real possibility that cannot be ignored. A visual recording would act as an assurance that nothing improper did take place in the interrogation room.

In his article, "The Authentication of Statements to the Police," Professor Williams stated that the police have an

enormous "stake" in obtaining a conviction after the time spent in apprehending an offender. "It is the conviction that makes their work worthwhile; an acquittal not only frustrates them but casts doubt upon their efficiency" (p. 9). It is the opinion of Professor Williams that this fear of an acquittal combined with the tensions and pressures of police work can easily lead to an interrogation getting out of control. Even if force is not used, the possibility of the situation giving rise to physical abuse is still present.

Another advantage which would be served by having a visual recording of the police interrogation is that it would no longer be necessary to rely solely on the evidence of police officers if a complaint of abuse is made. This would relieve police officers from a difficult situation. Professor Williams, in his article, cites a strong tendency among police officers to band together when a complaint is made against a fellow officer.

> "When irregularities are committed by one police officer, a defendant has no chance of persuading another officer to testify to them, even if the latter was not personally involved. The spirit or esprit de corps is too strong. The work of the police involves some danger and isolates them from the rest of the community. There is, therefore, a powerful sense of solidarity which leads the police to back each other up. When the culprit is a senior officer, he is in a position to influence the promotion prospects of others."

A video tape recording would provide independent evidence of what took place and would reduce the opportunity for speculation that a police officer might be colouring the truth, thus raising the profile of the police department in the eyes of the public.

4. Protection from False Complaints

A visual recording would also protect police officers from false allegations of abuse during interrogation. Such allegations could easily be negated by reviewing the recording.

Use of video tape would also contribute greatly to the solution of a common problem in the investigation of citizen complaints. Often investigations of this kind lead to an inconclusive finding of "unsubstantiated", which means that it is not possible to either confirm or deny the allegation, due to lack of evidence. An unsubstantiated allegation is unsatisfactory from an officer's point of view, as it casts a shadow upon the conduct of an officer, who might have been completely exonerated had there been a video recording of the interrogation.

5. Increase in Admissibility of Statements

Another argument in favour of video taping confessions is that fewer statements would be disallowed as evidence by courts, on the ground of reasonable doubt arising from discrepancies in police officers' testimonies. On occasion, a trial Judge may rule that he or she has a reasonable doubt as to the voluntariness of the confession, not on the ground that an abuse has in fact taken place, but because there is some discrepancy in the versions given by the police officers and the benefit of doubt must go to the accused. This can be problematic where the discrepancy is of a minor nature and does not affect the voluntariness of the statement. An actual recording of what took place in the interview room would enable a trial Judge to make this determination. The Judge would not have to resolve an uncertain matter in favour of the accused if he or she could see from the tape that the statement was given voluntarily.

6. Increase in Guilty Pleas

A positive impact which could result from the use of video taped confessions is an increase in the number of guilty pleas in appropriate cases. This result would ease the heavy workload which is now placed on the courts in this province. This

has been the experience in New York, in the Bronx district, where video taped confessions have been in use since 1975.

It is more difficult to challenge a statement and rely on the benefit of a reasonable doubt when there is an undisputed recording of the confession. An increase in the number of guilty pleas in appropriate cases would free the courts for the cases in which there is a real issue to be contested and would result in greater efficiency in the judicial system without impairing the rights of the accused.

In England, Research Study No. 8, commissioned by the Royal Commission on Criminal Procedure, concluded that the use of taped interrogations would eliminate up to 12% of contested trials.

7. Savings in Court Time

The final advantage in the use of video taped confessions is that voir dires, which can so often tie up a court, could be reduced in length or eliminated in many cases. Most issues as to the admissibility of a statement could be resolved in short order upon the court viewing the video tape and hearing the appropriate submissions by counsel.

The advantage of such a time-saving measure is glaringly obvious when one considers the criminal trial of several of the complainants dealt with in this Report. A factor that contributed to the length of this trial (considered the longest robbery trial in Canada to date) was the fact that the voir dire on the issue of the voluntariness of statements encompassed twenty-two weeks of evidence.

Unfortunately, lengthy voir dires are not rare. Recent cases such as R. v. Lukes and Flett (20 Nov. 1979; O'Driscoll, J., unreported) and R. v. McLeod et al (27 Oct. 1980, O'Driscoll, J., unreported) had, respectively, twenty-five days and twenty days of voir dire evidence, which evidence was, of course, repeated at trial. Clearly, the time and cost of these proceedings could have been significantly reduced had the police interrogation been video taped.

The reported experience in the Bronx district has been that much time is saved because judges are able to quickly determine whether the confession is voluntary and whether the suspect has been "read his Miranda rights".

D. Arguments Against the Use of Video Taped Confessions

1. Prejudicial to Accused at Trial

One argument that has been raised against the use of video taped confessions is that there could be a prejudicial effect on a trial if the jury were to view the recording of the suspect making his confession to the police. An example might be a case where the accused displayed a particularly aggressive manner during the course of the interrogation.

2. Incomplete Record

Another major criticism which has been levelled at video taped confessions is that not all of the time spent with the suspect can be captured on the tape. There would be no visual record of the arrest of the individual nor of what, if anything, took place on the way to the police station. Furthermore, unless video taping facilities covered all areas of the police station in which accused persons and police come into contact, there would still be the possibility that the police could exert pressure on the suspect just prior to taking him or her into the interview room. In such a situation, all that would be shown on the tape would be the suspect answering the questions asked by the police officers and it would appear that he or she was volunteering this information. This

argument was cited in Research Study No. 8, commissioned by the English Royal Commission on Criminal Procedure, 1981.

The Ouimet Report, The Report of the Canadian Committee of Corrections, released March 31, 1967, expressed the opinion that the protection which would be given by electronic recording is more illusory than real, as there would be no way of ensuring that all words spoken from the moment of contact with the police would be recorded.

> "No doubt in some circumstances, the electronic recording of an interview in a police station might be helpful in enabling the court to judge the atmosphere in which the statement was made. Nevertheless, the use of such a device masks a concealed danger in absence of complete assurance that everything leading up to the statement has been faithfully reproduced - which assurance would be difficult to obtain." (page 53)

The Committee was of the opinion that the best protection to be given to a suspect when taken into custody was to give him or her early access to counsel and to further depend on the vigilance of the courts in detecting police misconduct.

3. Cost

Another argument which has been made against the use of video taped confessions is that of cost. There is some concern that the cost of this new proposal would be far too

vast in comparison to the benefits which could be gained from the use. This argument can be combined with the above argument, that not all conduct could be monitored and so the cost of installation would not be offset by the minimal advantage which would be obtained.

4. Risk of Alterations

An argument against video taped confessions which must be carefully considered is that there exists a danger that the recording could be altered or edited and that it would be difficult to ensure the authenticity of the tape.

5. Increased Length of Trials

There has been some suggestion made that the use of video or audio recordings would not shorten the length of the trial. Instead, it would increase the length because there would be new issues to canvass such as the authenticity of the tape, the continuity of the recording, the problems of distortion, if any, and the effect to be attached to distortion.

A research study commissioned by the Royal Commission on Criminal Procedure conducted a court survey to ascertain whether there would be substantial savings with the use of taped interrogations. The authors of the report found that

about 5% of hearing time in a court case was spent challenging the authenticity or accuracy of police interrogations. The results of this survey suggested that court hearing time would not be reduced substantially by the availability of recordings. The authors were of the opinion that court time could, in fact, be increased, particularly if the whole of an interview were presented in evidence. Their opinion was that a significant portion of an interrogation can be taken up with matters which are completely irrelevant to the offence being investigated. If a recording was shown of the interview, all of these irrelevant matters would be played before the jury.

6. Decrease in Number of Confessions

Some users of the audio tape recorders in police interrogations have suggested that suspects may be less willing to confess if they know that they are being recorded.

7. Effect on Public Image of Police

The police may be concerned that their public image will suffer if interrogation techniques are shown to the jury at a trial.

E. Response to the Arguments Against the Use of Video Tape

1. Prejudicial to Accused at Trial

It is to be expected that occasions on which a video tape is actually played before a jury will be rare. It is likely that, in most cases, Crown and defence counsel will agree as to the content of the accused's statement to police, and any other matters that might be proved through video tape evidence, before the trial. The uncontested evidence would then go before the jury as an agreed statement of fact. This has been the experience in a number of jurisdictions in which video tape is used.

It is possible, however, that upon occasion the Crown will wish to present the video tape to the jury when an issue is contested. In these circumstances, the possibility of prejudice to the accused may arise.

The main situation which might give rise to prejudice to the accused would be if the video tape presents an unfavourable picture of the accused. This might lead to two related problems. The first is that even if the video tape shows the accused as a truculent, aggressive or callous person (for example), it is an established principle of law that the

accused is properly convicted of proved specific wrongdoing, not perceived bad character. The possible injustice arising from the admission of unfavourable character evidence will be compounded, moreover, where the reason for the unfavourable appearance of the accused on the tape is improper treatment by the police before the camera began to roll.

The possibility of prejudice is, indeed, a serious problem. The possibility of police mistreatment before a video taped interrogation should be borne in mind in implementing a video tape system. Appropriate safeguards, such as the placement of video tape units and procedures for keeping adequate records of the treatment of accused persons at police stations should minimize this risk.

In those situations where the Crown proposes to introduce the video tape evidence to a jury, the court will be asked to consider whether the point sought to be proved, and the probative value of the video tape evidence, is so compelling as to outweigh possible prejudicial impact. In cases where appropriate directions to the jury might not prevent prejudice, the court may feel compelled to exclude the video tape evidence.

2. Incomplete Record

The second argument against video taping concerns the fact that not all of the time spent by an accused person in the police station can be captured on video tape. It is true that there is always the possibility an accused person could be threatened or otherwise improperly dealt with en route to the police station or out of range of the video taping equipment.

I feel that it is possible to minimize this risk in two ways. The first is the use of video taping equipment in areas additional to the interrogation room, as long as due concern for privacy of people held at police stations is recognized. It may be appropriate, for example, to have video taping equipment located and operating in any room that might be used for interrogation, in the corridors leading thereto, in the elevators and garage area of a police station and in the booking area normally located just outside the holding cells. While this type of set-up does not eliminate the risk of improper procedures elsewhere, especially while en route to the station, it does significantly reduce the risk. If this technique is combined with improvement in the techniques of recording events which occur during the accused person's time in custody, it should go a significant way toward reducing the risk of an incomplete record.

3. Cost

The third argument cited above is cost. There is no doubt that video tape equipment is more expensive than the piece of paper needed to take notes of what an accused person is saying. However, most studies of both audio recording and video tape recording have considered the cost as balanced against certain important benefits.

In regard to video taping, an experiment was conducted in Washington, D.C. and evaluated in a 1975 study by Sgt. R.H. Gebhardt, of the Bureau of Criminal Identification, St. Louis County Police Department, Missouri. Gebhardt wrote that video taping is a valuable aid in the investigation of complex crime scenes. As long as the activity taped was relevant and material to the case and had been properly authenticated and verified, it was admissible in evidence. No transcripts were necessary, and tapes were played back to the jury if required. Gebhardt concludes that it is not expensive to have police vans equipped with video machinery and no expertise is needed to operate such machinery.

Research Study No. 3 commissioned by the Royal Commission on Criminal Procedure notes that the English Criminal Law Revision Committee seems to feel that even audio tapes would be expensive because transcripts would need to be made.

However, the author of Research Study No. 3 denies that transcripts would be required in any but a small minority of cases where some dispute arises. She goes on to state that the fact that the interrogation has been recorded is likely to mean that the only accused to complain would be those who have strong evidence that what is said in court is incorrect. The tapes can then be produced to clarify the situation. The author concludes that the Committee's view that transcripts be made automatically seems to lack substantiation.

Later in this Report there will be a review of jurisdictions that have implemented video taping experiments. Questions of cost will be reviewed in that section; however, to summarize, I feel it is likely that the benefits of video taping may be seen to outweigh the costs.

4. Risk of Alterations

The fourth argument noted above is the possibility that a video tape might be altered. Certainly, in the implementation of a video tape system, consideration should be given to maintaining the integrity and authenticity of the tapes. However, it should be noted at this point that it is extremely difficult to alter a video tape unnoticeably. Further, there are procedures that would make alteration difficult, if not impossible. These range from safeguarding measures for the

tapes themselves, to the inclusion of time-coded counters, visible on the video tape at all times. A method that is successfully used in the Bronx District Police Department is to have a large clock with clearly visible numbers and a prominant second hand situated in the background behind the suspect as he speaks.

5. Increased Length of Trials

The fifth argument raised is the suggestion that the use of video tape might lengthen a trial because of the necessity to canvass such issues as the authenticity of the tape, the continuity of the recording or the effect of any problems of sound distortion. It is possible that these factors could arise in a court trial, but it should be noted that these will not arise in every case. The experience in the United States has tended to show a shortening in the entire criminal justice process, from the arrest of the accused, through the trial where video taped interrogation is used.

Technical imperfections in recording of statements which could result in poor or inadequate visibility or audibility do not necessarily dictate automatic exclusion of taped evidence, if the faults can be remedied or if the unaffected portions of the tape have sufficient evidentiary value. This appears to be the position taken by the American courts. In one case

where the recorder on which the taped confession was played back was defective and the tape was almost inaudible, the court ruled that it was not in error to permit the jury to hear the tape recording again on a different tape recorder.

6. Decrease in Number of Confessions

Another argument is the possibility that suspects may be less willing to confess if they know that they are being recorded. The authors of Research Study No. 8 commissioned by the Royal Commission on Criminal Procedure found this response in one of their surveys. The authors noted, however, that no strong conclusions can be drawn resulting from this response since their respondents based their views on only a small sample of interviews with significant variations in recording techniques used.

An experiment conducted in Scotland came to the conclusion that suspects did not appear to be inhibited and one experiment in New York indicated that suspects seemed more willing to confess when they knew they were being taped. The New York study contained an opinion of the District Attorney in the Bronx district, that most people were "weaned" on television and that there is a tendency of many people to want to confess when confronted with a camera. Professor Glanville Williams in his article, "The Authentication of Statements to the

Police," notes that the experience of solicitors who use tape recorders for client interviews shows that clients soon forget the presence of the recorder. However, it is possible that there may be a different reaction when the interview is with a police officer.

7. Effect on Public Image of Police

A further argument is that the police may fear that their public image will be tarnished if their interrogation techniques are made public through video tape and airing in court, due to misunderstanding of these techniques on the part of the public.

This problem is addressed by Professor Glanville Williams in his article. Professor Williams points out that many of the tactics used by police officers in interrogating suspects are familiar to the public because of the many television shows and movies that have dealt with the investigation of crime. Thus, public tolerance may be a good deal higher than the police might expect.

In regard to any questionable practices of interrogation, Williams notes that there is a need for a new settlement, broadly acceptable to the police and the public, of the law and ethics of interrogation. Once broad parameters are

established outlining, for example, what subterfuges can properly be used in obtaining evidence, there would be a clearer public appreciation of what does and does not amount to improper oppression. In my view, this exercise would be beneficial when applied to any police force; a general setting out of rules would assist the interrogating officer in governing his own conduct, as well as providing guidelines for better supervision by the force in general.

An allied concern is the staging of an "incident" by the suspect. There has been some suggestion made that the use of strictly an audio recording of an interview could encourage a suspect to play act for the tape and give an impression that he was being coerced or forced or beaten to give a statement. Although suspects may occasionally attempt to compromise police officers in a recorded interview, it was the opinion of the authors of a Research Study conducted by the Royal Commission on Criminal Procedure that this was not perceived to be a difficult problem on the part of the police officers and that it did not arise that often.

Professor Williams has suggested that there is no real substance to this argument. He is of the opinion that a suspect would not make an admission and then later try to nullify it by suggesting that he had been intimidated. He stated that

a suspect would simply refrain from making the admission, either by remaining silent or by telling a lie. If the person objected to being recorded he would indicate so at the beginning of the interview. It is unlikely that a person would go through an entire interview and then at the very end suddenly make noises as if he were being beaten. Moreover, even if he were to attempt such a stratagem, the earlier portion of the recorded admissions would show that he was not in any pain and that he was speaking in a very calm voice, thereby nullifying any argument that he may later make that the statement was coerced.

As Professor Williams stated at page 20 of his article, "The Authentication of Statements to the Police":

> "... but in any case this objection to tape recording does not reveal any defect specific to this way of preserving the evidence. Defendants already try to efface the effect of their admissions to the police by alleging duress or other oppression. Having the admission on tape does not subject the police to any greater risk of having a false allegation of oppression made but quite the contrary."

A further protection against any possibilities that the suspect may try to set up a later defence of coercion would be the actual video recording. A video recording of the entire interview would show that there was no force or violence used on the suspect during the interview and he could not later

argue that he had been coerced. Furthermore, if he tried to induce the police officers to strike at him, this attempt on his part would be very obvious from the visual recording.

F. Jurisdictions Which Have Used Video Tape

I now propose to examine some of the various jurisdictions which have already implemented the use of video taped confessions.

1. Haldimand-Norfolk Regional Police Force

Recently the Haldimand-Norfolk Regional Police Department has instituted the use of video tape at the police station in order to reduce the number of complaints which have been made against members of their police force. This Department found that many of the complaints which they received against their officers alleged occurrences which took place in the police station. It was found that they did not have independent witnesses as they would if the occurrence took place outside of the police station. They, therefore, decided to implement the use of video tape from the moment of the arrival of the suspect in the police station until he is booked into the cells. It is believed that this is the target time during which many complaints have arisen.

In the Fall of 1978, the Haldimand-Norfolk Regional Police Department obtained the necessary equipment and established a procedure for monitoring the actions of their police officers whenever a suspect is brought into the police detachment. Seven Sony video cameras were placed throughout the police station in the various areas that are involved in the incarceration of an individual right through to each cell cubicle. They also set up an independent taping facility at the console, in order that the sequence could be taped from any camera for a permanent record. At each camera there was installed a microphone in order to monitor the sound. The procedure would be as follows:

After an officer has made an arrest, he would contact the radio dispatcher and advise that he was bringing the suspect to the station. This time would be automatically logged on their existing 4000 Dictaphone Logger. It would then be easy to monitor the time during which an officer made the initial arrest until he arrived at the station, in order to preclude any false allegations that the accused person had been driven around for a period of time while a beating was administered. As the officer arrives at the police station with his prisoner, he would advise the dispatcher that he has arrived. The dispatcher would raise the garage door and this would allow the vehicle into the police station. At the same time, the taping procedure would be commenced by the dispatcher and a camera

and microphone would record the individual leaving the cruiser. This initial monitoring would preclude any complaints that the suspect was beaten as he was removed from the cruiser. The suspect is made aware of the fact that the actions are being recorded by a large sign which reads:

> "NOTICE - Sections of this building including this area are monitored by electronic devices including remote audio-visual recording machines. This equipment is now in operation and you are under observation. H-N Regional Police."

This notice is also read to the suspect if he is sober enough to allow this procedure.

As the suspect and the police officer leave the garage area, they are automatically picked up by the second camera which is located by the booking section. All transactions as to property taken and behaviour are recorded by this camera. After the suspect has been placed in the cell and the arresting officer has left the area, the taping is stopped. The prisoner is then constantly monitored on the display terminal at the communication central. While being monitored, if he does anything unusual such as scream or attempt to hurt himself, the dispatcher immediately activates the taping sequence again. If anybody, for any purpose, enters the cell, the taping sequence is commenced by the dispatcher. The total sequence is under the jurisdiction of a civilian operator and all of the

officers involved in the incarceration process know that they cannot interfere with the procedure.

There does not appear to be any provision under this procedure to video tape interrogations of suspects. Therefore, although it does show the appearance of the suspect at the time of arrival at the station and his appearance at the time of being booked, it fails to indicate what takes place during an interrogation. This equipment has been used in the breathalyzer room, but the force has not yet produced a case to be used in the court.

The Haldimand-Norfolk Regional Police Force has found that, to date, the total cost to January, 1984 of placing the equipment in three divisions has been about $40,000. The tapes are maintained for six months in a locked security area with the key available only from the Records and Communications Supervisor. The force has found that complaints against police officers have dropped over 70% since the beginning of this procedure. On two occasions as a result of regular evaluation of the tapes, they have disciplined members of the force. The force has also found that although there was some initial resistance on the part of the police officers, it has since disappeared upon the Police Association realizing the protection that was being offered to police officers.

2. New York--Bronx District

Since 1975 video taped confessions have been used in the Bronx Police stations with such a remarkable success rate that it has led the District Attorneys of Manhattan, Brooklyn, Staten Island and Queen's to start similar programs. The Bronx video tape unit was started with a $95,000 Federal grant. A single camera using black and white tape was used and two employees operated the system. Since then it has video taped 2,600 confessions. The mobile unit which operates 24 hours per day, seven days per week, now uses four colour cameras, six technicians and has an annual budget of $130,000. During the taping, the suspect is seated in front of a large clock which has a prominent second hand. This clock ensures that there are no erasures on the tape.

According to the Bronx District Attorney, the taped confessions have reduced the number of trials that are held. The lawyers representing the accused persons usually advise their clients to plead guilty upon viewing the tape. The District Attorney indicated that the standard hearing to determine if the confession was made voluntarily now takes five minutes with the use of a taped recording instead of the usual three days. If the taped confession does end up before a jury, it has a tremendous effect on the jury. The jury is

able to see the defendant waving his rights to remain silent and to obtain legal counsel.

The Manhattan District Attorney was of the opinion that a taped confession enabled a jury to have a greater feeling of security when interpreting the evidence at trial. It also gave the prosecutor more security because it could more accurately depict the defendant's state of mind than words alone.

The program has been successful largely because of the willingness of most suspects to make confessions in front of the camera. Only one percent of all suspects in the Bronx have refused to be video taped. Prosecutors estimate that those who refuse are people who know how damaging a confession can be, that is, police officers charged with crimes and professional criminals.

Not only has the Bronx experience served to increase the number of convictions obtained, but it has also been useful in protecting the police against false allegations. The Bronx Police Department has also extended the use of video tape equipment when a person is brought into the police station under suspicion of drunken driving. In these cases, the recording is used to show that the suspect has refused to take a chemical test and also to provide a record of physical sobriety tests that are administered to the impaired suspect.

Further, the Bronx program has assisted in establishing similar programs in other jurisdictions including Miami, Denver and St. Louis.

3. The Scottish Experiment

A two-year experiment in tape recording police interrogations was undertaken by the Social Research Branch of the Scottish Home Office and Health Department. This experiment took place from May 1, 1980 to April 30, 1982, and the results were gathered together and placed into a report known as the "SHHD Report". The two areas in which the experiments were conducted were the centres of Dundee and Falkirk.

Of particular interest in the study was an attempt to discern whether there was any new impact on the willingness of the suspect to confess when confronted with a tape recorder. In the first twenty-four months of the tape recording experiment, the statistics show that only three percent of the suspects interviewed refused to be taped. Furthermore, the SHHD Report indicates that few suspects took advantage of the fact that they were being tape recorded to play act or pretend that they were being mistreated by the interviewing officers.

What is of particular importance in this study is that the results have shown a significant impact upon the conduct of

the police officers who conduct the interrogations. An immediate result was that the number of suspects interviewed dropped from the level obtained in the pre-experiment period. The SHHD Report concluded that this could be because the officers were omitting to interview suspects completely on tape. They may have been interviewing them elsewhere or they were interviewing them in the police station, but not on tape.

The second clear effect was upon the duration of the interview. Taped interviews for the most part were significantly shorter than those interviews conducted during the pre-experimental period. Forty-seven percent of all the interviews in Dundee lasted five minutes or less, while in Falkirk, seventy-six percent of the interviews lasted five minutes or less. In the pre-monitoring period, however, the average duration of an interview in Dundee was twenty-four point five minutes in length, while that in Falkirk was thirty-nine minutes in duration. Thus, there certainly has been a significant impact as a result of this recording experiment.

The content of the interviews has also been affected since the use of the tape recorders. In Dundee there was a sharp drop from 75% to 45% in the number of interviews where the suspect made a formal reply to the caution and charge.

Interviews which produced no formal response to police questioning rose from 15% to 44% of all interviews. In Falkirk, the number of interviews in which the suspect made a statement fell from 38% to 20%.

The results of this experiment were analyzed by two authors, Michael McConville and Philip Morrel in an article entitled, "Recording the Interrogation: Have the Police Got it Taped?" (1983) Crim. L.R. 158. It was the opinion of these authors that the principal reason for the changes in the behaviour of the suspects was the alteration in the behaviour of the police themselves. The police were initially reluctant to use the taping system and this would explain the decline in the number of interviews conducted on tape. The authors believe that the police then adopted another tactic to circumvent the tape recording system which was to engage in preliminary interviewing elsewhere than in the interrogation room. In both Dundee and Falkirk, there was a gradual, but steady increase since the inception of the experiment in the number of statements made prior to the arrival of the suspect at the police station. This increase was particularly marked in Falkirk where the number of pre-interview statements rose from 14% of all such statements in the period before the institution of the tape recording experiment to 44% during the tape recording experiment. In Dundee, this number rose from 37% to 43%.

The report also showed considerable delay between the suspect's arrival at the police station and the commencement of the interrogation. The authors of the article concluded that the officers were questioning the suspects before turning on the tape recording machine. When they then turned on the tape recorder they used a formal rigid style of questioning, which would account for the shortening of the interview lengths.

It is the opinion of the authors that the police got the information they wanted in the pre-interrogation, non-taped interview and then conducted themselves in such a way during the formal taped interview that their questions were not designed to elicit responses. The police were able to ensure that what was taped was devoid of any real meaning. At page 162 of the article, the authors write:

> "It emerges that police acceptance of public scrutiny is low and, more importantly, they have found a way of disguising this attitude in the context of tape recording. What has happened is that the police have managed to give the appearance of accepting taping by recording an acceptable number of interviews. McFadden taught the police the lesson that there were real dangers in recording the traditional interrogation. What is recorded, therefore, is what is acceptable to the Courts and what would pass public scrutiny. The rigid, stereotyped questioning procedures they have adopted have produced acceptable, if shell-like products. The police have been able to do this only because they have conducted their

> usual questioning outside the reach of tape recorders. Interviews have been taped, interrogations have continued to take place in secret."

The McFadden decision referred to in the above quotation was an unreported case from 1980 in which a taped interrogation was ruled inadmissible because parts of the interview had been improperly conducted. This was taken by the police officers as a rejection of their interrogation methods.

I am confident that the problem that arose in the Scottish experiment will not be reflected in Toronto. In my view, the Metropolitan Toronto Police Force will see the real value that arises from the use of video equipment and will understand that it not only protects police officers' interests, but the interests of the suspect as well. I believe that the Metropolitan Toronto Police Force is more likely to react similarly to the Haldimand-Norfolk Regional Police Department than to the officers in the Scottish experiment.

4. The Dartford Experiment

The Research Study undertaken by the Royal Commission on Criminal Procedure into Police Interrogation and Tape Recording consisted of an experiment which took place in the Dartford Police Station of Kent Constabulary during the four

months, April to July, 1979. The primary objective of this experiment was to assess the technical and operational difficulties and/or advantages of tape recordings of police interviews. Research Study No. 8 by the Royal Commission on Criminal Procedure indicates that the experiment was to provide assistance in assessing the following matters:

1) The acoustical environment required to provide satisfactory recordings;

2) The quality of the equipment required to provide satisfactory recordings;

3) The operability, reliability, and serviceability of the equipment used;

4) The requirements and provisions for copies of tapes;

5) The requirements for and provision of transcripts, recordings;

6) The requirements for and provision of, edited recordings and transcripts;

7) The requirement for and provision of, secure recordings;

8) The operational implications for the police, defence and Courts.

The experiment was set up in four sequential phases in order to enable the interviewing officers to gain some experience and familiarity with the tape recording machines. An initial policy was established whereby the police could not be allowed to use discretion in deciding which interviews should be recorded, although the suspect could refuse to be recorded if he so chose.

The first phase of the experiment involved merely recording the reading back of the statement which had been made by the suspect.

The second phase then recorded the taking down of the statement from the suspect along with the read back.

The third phase involved recording the entire interview inside the station and the fourth phase allowed for video recording of the taking down and read back of the statements.

The results of the study show that a considerable number of suspects who should have had their interviews tape recorded were not in fact recorded. The discrepancy was small for the first two phases since only about half of all the suspects

made a written statement at that time. In phase three only about a third of all suspects had their interviews tape recorded. Various reasons were given why some of these interviews were not taped. They included inaccessibility of the recording equipment and blank tapes at certain times; the offence had already been admitted to on the way to the station or to a uniformed officer; the recording equipment was already in use. In one case involving seven suspects, it was decided by senior officers that it would be too complicated to try to tape all seven because of the limited recording resources. They, therefore, chose not to tape any of them. In some of the other cases there was no specific information about why tape recordings were not made of the interviews.

It would appear from this study that in order for an accurate assessment to be made of the feasibility of tape recorded statements, it would be best if all interviews were recorded unless the suspect refused.

One definite benefit that was obtained from this experiment was that it showed the need for certain requirements in the recording equipment. One problem which was encountered was that the officer had to be aware of when the tape was coming to an end. One recommendation that was made by the Research Study was that the tape used should provide an audible and visible warning that the tape was about to come to an end.

The officers also found it somewhat cumbersome to obtain the recording equipment and move it into the interview room. Therefore, a recommendation was made that recording equipment be permanently set up in the interview location and that it be operated by one button only, an on/off switch. This latter recommendation would ease the workload on the officer who was operating the machine.

No special problems were encountered in the video recording phase, although this phase was used only for the taking of statements from seven suspects. During this phase a police officer operated and monitored the video equipment while the officer on the case concentrated on taking the statement. The Research Study recommended that the camera and video recorder should be permanently set up preferably with the clock in the field of view.

There were some acoustic problems noted during this experiment. In some of the tapes it was noticed that audibility was not at a premium because there would be two people talking at the same time or there may be too much background noise. There was also a problem with non-verbal responses and with a suspect who had a very soft or mumbling voice. Acoustic improvements were made in the interview rooms and this tended to reduce the earlier problem.

Of the 80 tapes which were examined a total of 52 recordings contained conversations in which parts were difficult, if not impossible, to transcribe. Before the acoustic improvements were made, every tape gave rise to some problem, whilst for the last 39 tapes after the improvements had been made there were only 20 complaints about the quality of the tape. Part of this improvement was attributed to the officers' improved interviewing techniques. The major improvement was in the reduction of background noise which is consistent with the better acoustics in the interview room. There were still difficulties with people talking at once and with the suspect's soft voice.

The researchers found that the members of the Criminal Investigation Department at the Dartford Police Detachment were not very pleased with the instigation of this experiment, but rather were opposed to tape recording. As the officers gained experience into the second phase of the project, there emerged a feeling that the tape recording of statements did not pose any particular problems other than the transcription of the statements. At the end of the experimental period, the researchers formed the opinion that the detectives who were involved in the taped interviews were no longer opposed to the use of tape recording equipment. Some were more enthusiastic than others, but all agreed on its potential evidentiary value.

The researchers had no direct contact with suspects who were interviewed and recorded and so were unable to ascertain what their response or feelings towards the experiment were. They did, however, speak to the interviewing officers to determine whether they noted any reaction on the part of the suspect when confronted with a tape recorder. In nine cases officers reported that suspects appeared to be nervous in the presence of the recorder. Four of those suspects had had previous convictions. In seven other cases the officers stated that they had some difficulty in obtaining answers to questions, although the researchers were of the opinion that one could not necessarily attribute this to the presence of the recorder. It was the opinion of one officer that a suspect would have implicated his co-conspirators if the recorder had not been present. The study also showed that seven suspects refused to be recorded at least in part; all seven had previous convictions.

At the time that this report was written, evidence of tape recorded interviews had been introduced in two cases in the Magistrates' Court. One of these cases involved a tape recording of the entire interview and the other was a video recording of the taking of the statement. In both cases it was clear that there was a real need for a transcript of the interview because the recording alone would have been of

limited assistance to the Court. In one case, the suspect's replies did not come across clearly and within two or three minutes of the recording being played in the Court the Magistrate requested a transcript. In the case involving the video recording, the Magistrate stopped the replay of the tape after three minutes because some of the defendant's replies were inaudible. This video tape recording was of some assistance, however, because it did show that the defendant's statement had been taken in a very calm atmosphere.

One of the concerns about the use of audio or video interrogations is that it may encourage a suspect to try to compromise a police officer by faking an assault. The study conducted in Dartford showed that this was not a problem whatsoever.

The study found that there were occasionally problems with some tapes which would have caused a difficulty if in court the case had been contested. In one case, the starting time of the interview was not recorded, because the leader tape was still running through. In another case, the recorder failed to operate, unknown at that time to both the operator and the suspect. Two tapes each had two gaps in them. In one of these cases, the defence counsel, during the committal hearing, raised this matter and asked whether the machine had been turned off. It turned out that the machine had not been

turned off. This case had not yet come to trial at the time this report was written.

Researchers found that there have so far been no allegations that the tapes themselves have been interfered with.

Although this experiment was very small, did not cover many detachments and was not conducted over a lengthy period of time, the results are still interesting. The researchers were of the opinion that the real hazards would only come to light once taped interrogations are used as a matter of course and precedents are set in the courts.

5. The Proposed English Experiment

a) Proposal

In England as of April 1983, the Home Office has established a plan to carry out a series of field trials in order to assess the efficacy of tape recording confessions made by suspects to police officers. This experiment will examine audio tape recording alone and will not deal with the issue of video taping.

It is proposed that six police districts take part in this experiment.

As part of the research, local committees will be established under a judicial chairman, to assist in any problems which arise in the field trials at the local level.

b) Taping Procedure

The tape recording equipment to be used will be a double deck recorder which enables two tapes to be recorded at once. The tape recorder will be capable of the one operation of recording only. The playing back of tapes will have to take place on separate equipment and the copying of tapes will be done by fast copying equipment.

The tape recorder will record on two tapes in mono on one channel only. The other channel will have recorded onto it automatically a time coding device which will enable a check to be made of whether any tampering has taken place.

Of the two tapes on which the recording is made one will be sealed and treated securely. The other will be a working copy from which further copies can be made as necessary and which can be used for the purpose of assembling the prosecution case. The security of the sealed copy is a vital matter and the procedures laid down have very much in mind the need to ensure and to be able to prove, if necessary, that the tape is a true record of an interview.

The tapes to be used will be cassette tapes which will last for 45 minutes. To avoid confusion in turning tapes over, they will be used on one side only. Before use, the tapes will be unused and sealed and will have been kept securely.

c) Interviews to be Recorded

The new proposals will apply only to interviews which have always been conducted in the police stations and suspects who would normally be interviewed at home or at the scene of their crime should continue to be interviewed there. Interviews of suspects for indictable, hybrid and certain listed summary offences will be tape recorded at the police stations. The officers will be excused from recording interviews when it is not reasonably practical to tape the interview either because of lack of interview facilities or mechanical failure. This decision must be authorized by a senior officer, either an inspector or the officer-in-charge of the station. The new proposals require that the entire interview must be recorded, including the taking and reading back of the statement. If a police officer commences an interview with a witness and he later comes to believe that this witness may have been involved in an offence, he should first caution the witness and then continue to record the interview where it is reasonably practicable to do so.

After issuing the first caution to the suspect, the police officer should tell the suspect that the interview is being recorded. He must also give his name and rank and the names and rank of any other police officers present, the name of the suspect and other individuals present, the date, time and place of interview. All these matters will be recorded on the tape.

The steering committee has given further consideration to what should be done if a suspect refuses to be recorded. Originally, it was thought that the final decision of what to do should be left up to the individual officer, that is, whether or not he should continue taping the interview. There was some concern, however, that the officer's behaviour would be considered oppressive if he continued with the interview despite these objections. The steering committee has decided to give further thought to this, and at the moment we are not in receipt of any proposed changes.

Under the new experiment, officers would be allowed some discretion to turn off the machine if the suspect wishes to speak about other matters not directly related to the offence and if the suspect is unwilling to have this other material recorded. It is recommended that the time of turning off the tape should be recorded as well as the time when the recording is resumed. It is further recommended that the officers should first ask the suspect to talk about these particular

matters after the conclusion of the formal interview in order to avoid any breaks in the interview.

If, during the course of the interview, breaks have to be taken (for meals, for example) and the interview room is to be vacated by the suspect and the police officer, the time of the break should be recorded on the tape by the police officer as should the fact that a break is to be taken. The tape should then be removed from the tape recorder and the master copy should be sealed. If the break is to be a short break and the suspect and the police officer are to stay in the interview room, the fact that a break is to be taken should be noted and the time of the break recorded. It would not be necessary, in this situation, to use a new set of tapes. The tape recording should continue after the break, using the same tape with the time of recommencement recorded on the tape.

Two minutes before the end of the tape is reached, the recorder will give an audible warning sound to the police officer. The officer should tell the suspect that the tape is coming to an end and he should complete that particular portion of the interview. He will then obtain new tapes and unseal them in the presence of the suspect.

At the conclusion of the interview, the suspect should be offered the opportunity to clarify anything he has said to the

officer. He should not be offered the opportunity to listen to the tape at this particular time. If he requests to hear the tape, he should be informed that he or his solicitor will be given later access to the tape.

At the conclusion of the interview, the master tape must be sealed with a label and placed in a secure storage place.

The Committee recommends that the police officers still continue to make notes at the interview.

d) Post-Interview Procedures

When making up his notes, the police officer will be able to refresh his memory by listening to the working copy of the tape and he may take down short passages verbatim into his notebook. He should record the results of the interview in his notebook and prepare a statement of evidence for the prosecution. In this statement he should indicate that the interview was recorded. The officer should not produce transcripts unless they are needed to follow up for the criminal investigation and only after obtaining the authority of senior officers.

The suspect's lawyer should be informed at an early stage of the existence of the recording. This could probably be

done with a routine service of the police officer's statement of evidence. The committee recognizes that this would provide advance disclosure of the prosecution's case, but is of the firm opinion that this is necessary in order to provide access to the tape recording of the interview. If it is believed that the statement of evidence should not be provided to the solicitor, then another means should be used to inform the solicitor of the existence of the recording. Defence will be allowed access to the tape at either the police station or the prosecutor's office, or he may be sent a copy if he so requests. It is hoped that the defence will listen to the tape at the police station or the prosecutor's office, because then it may be possible to arrive at an early agreement about the substance of the interview.

e) Transcription

A major concern of the steering committee was to keep the cost of transcription as low as possible. It is believed that there should be no need for a transcript if there is no dispute about the evidence to be given by the police officer. If the substance of the interview is in dispute, the parties may wish to consider whether the preparation of a transcript will usefully resolve the dispute. The parties will have to check on the accuracy of the transcript and if there is some dispute about the accuracy, the party producing the transcript in

court will have to prove the accuracy. This may possibly be done by playing the tape in court.

The steering committee has also made provision for the editing of tapes or transcripts in order to keep out irrelevant or prejudicial material. If the tape is being played in court, care must be taken to ensure that any passages which are played do not contain prejudicial material. It may be necessary to prepare an edited tape from the working copy, but not from the master copy of the tape.

f) Court Proceedings

In court, the officer giving the evidence of the substance of the interview will refer to the fact that the interview has been tape recorded. The tape will be produced as an exhibit, and the officer will also inform the court if a transcript of the interview has been made. The tape will only be played in court to resolve a doubt if there is no transcript available or in order to determine the accuracy of a transcript. If challenges are made to the admissibility of the police officer's evidence of the interview, then provision should be made for a play back of the recorded interview in court in order that the trial judge may decide on this issue.

G) Conclusion

As noted at the beginning of this part of the Report, I have concluded that the advantages of using video tape are clear enough to warrant the implementation of a pilot project in Metropolitan Toronto. Obviously, however, there are many factors to be considered and still many issues unresolved regarding this question of video taping police interviews with suspects. Accordingly, the recommendation contained in this Report is that a pilot project be established. This project should be carefully monitored and evaluated. The material contained in this part of my Report might be a useful starting point in the establishment of the pilot project.

BIBLIOGRAPHY -- VIDEO TAPING

1. "A call for Installation for Video Tape Equipment in Police Interrogation Rooms" P. McWilliams, Criminal Lawyers' Association Newsletter, December, 1981.

2. "Admissibility of Video Tape Film in Evidence in Criminal Trial" C.T. Drechsler, 60 ALR (3d) 333.

3. Canadian Criminal Evidence, P. McWilliams, Canada Law Book, (First Edition) "Confessions and Interrogation: The Use of Artifice, Stratagem and Deception" C.E. Riley, FBI Law Enforcement Bulletin, April 1982.

4. "Documentary and Demonstrative Evidence" J.D. Scott, Fed. of Law Societies of Canada, Toronto, Ontario, July, 1978.

5. "Evidence -- Admission of Video Tape" S.W. Conrad, Chitty's Law Journal, Vol. 22, No. 3, 1974.

6. Frampton Inquiry Report: Manitoba Police Commission, 1976

7. "Law Reform Commission Head Calls for Video Taping of Accused's Questioning" Ontario Lawyers Weekly, 23 December, 1983, p. 17.

8. "Motion Pictures As Evidence" D. Cragg Ross (1963--64) 12 Chitty's L.J. 249.

9. "Police Will Tape Children's Sexual Abuse Complaints" Ontario Lawyers Weekly, Vol. 18, September 2, 1983.

10. "Practice Note: The Admissibility of and Weight Given to Motion Picture and Video Tape Evidence in Canadian Courts" E. Goldstein, 45 Sask. Law Rev. 319.

11. "Questioning by the Police: Some Practical Considerations" G. Williams (1960) Crim. Law Rev. 325.

12. "Recording the Interrogation: Have the Police Got It Taped?" M. McConville and P. Morrell (1983) Crim. L.R. 159.

13. "Smile, You're on the D.A.'s Camera" Time, June 27, 1983.

14. "Steps to Police Reform" Globe & Mail, Thursday, December 8, 1983, p. 7.

15. "The Authentication of Statements to the Police" G. Williams (1979) Crim. L.R. 6.

16. "The Celluloid Witness" P.P. Pardis (1965) 37 U. of Colorado Law Review, 235.

17. The Criminal Law Review (1981) July Edition.

18. "The Draft Code of Police Questioning -- A Comment" P. Mirfield (1982) Crim. L.R. 659.

19. "The Use of Video Tape Evidence in Civil Cases" B.B. Elman, 19 Alta. L.R. (1981) 215.

20. "Video Tape in Criminal Cases" R.H. Gebhardt, FBI Law Enforcement Bulletin, May 1975.

21. "Video Tape in Criminal Proceedings" J.P. Barber and P.R. Bates, The Hastings Law Journal, March, 1974.

22. "Video Tape Recording", J. Kane, Judicature Vol. 50, No. 8, April, 1967.

23. "Video Taped Confessions Raising Conviction Rate" New York Times, 5 June 1983.

24. "Will Electronic Technology Take the Witness Stand?" J.L. McCrystal, U. of Toledo Law Review, Winter, 1980.